

Patriot Act II - Leg Proposals

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HEREIN IS UNCLASSIFIED
DATE 09-07-2005 BY 65179DMH/lr2 Ca# 05-CV-0845

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MEMORANDUM TO:

FROM:

FBI-OGC

SUBJECT:

Comments on 1-9-03 Draft of Domestic Security Enhancement Act

DATE:

January 14, 2003

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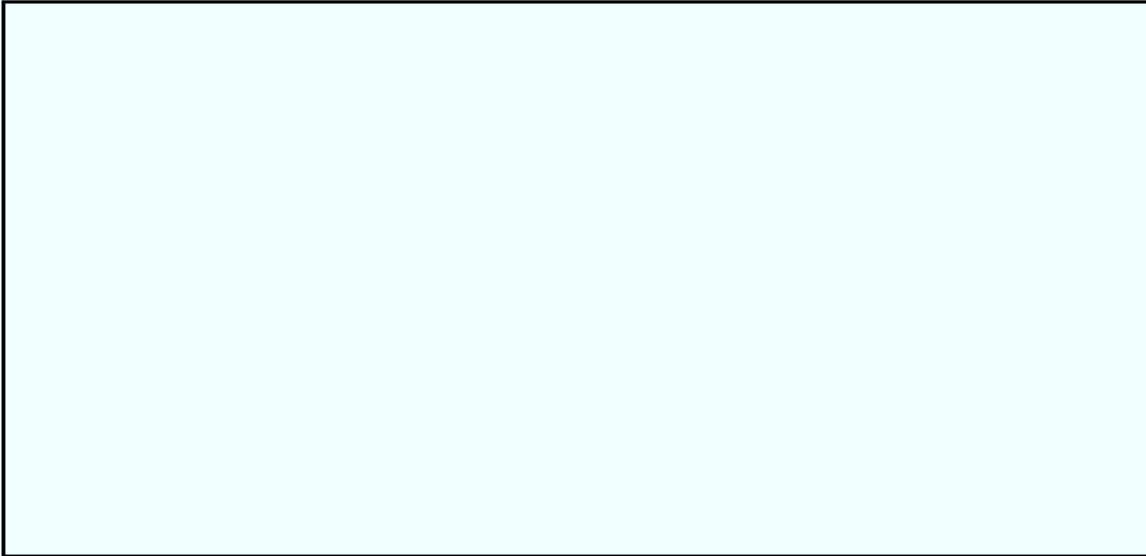
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Additional Comments:

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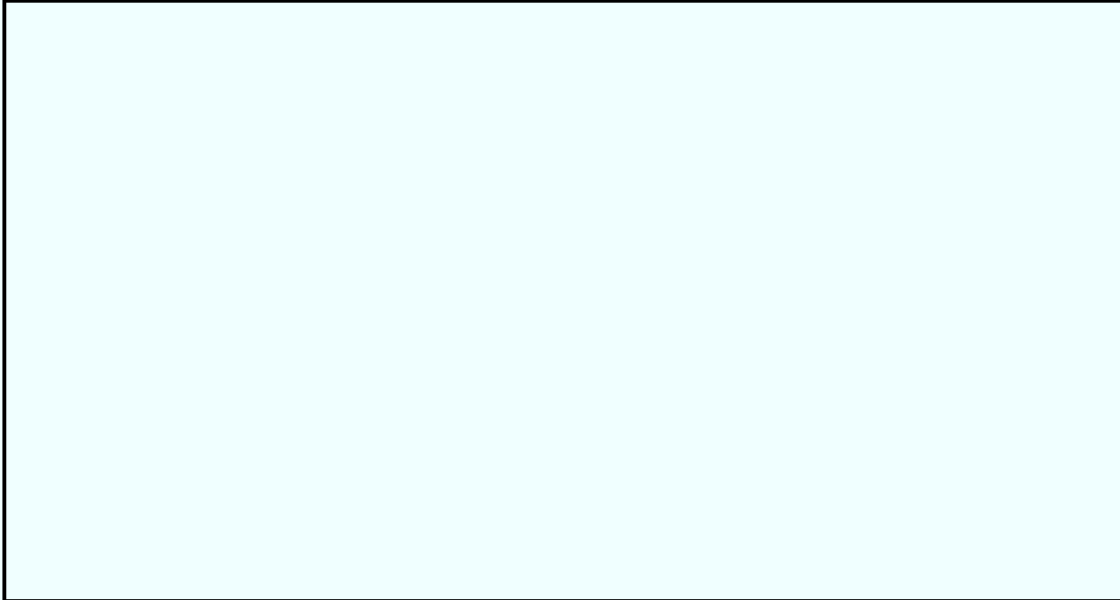
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DATE 09-07-2005 BY 65179DMH/lr2 Ca# 05-CV-0845

November 15, 2002

FBI Terrorism Legislation Proposals

1. National Security Law Proposals

INFORMATION SHARING



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INVESTIGATIVE TECHNIQUES



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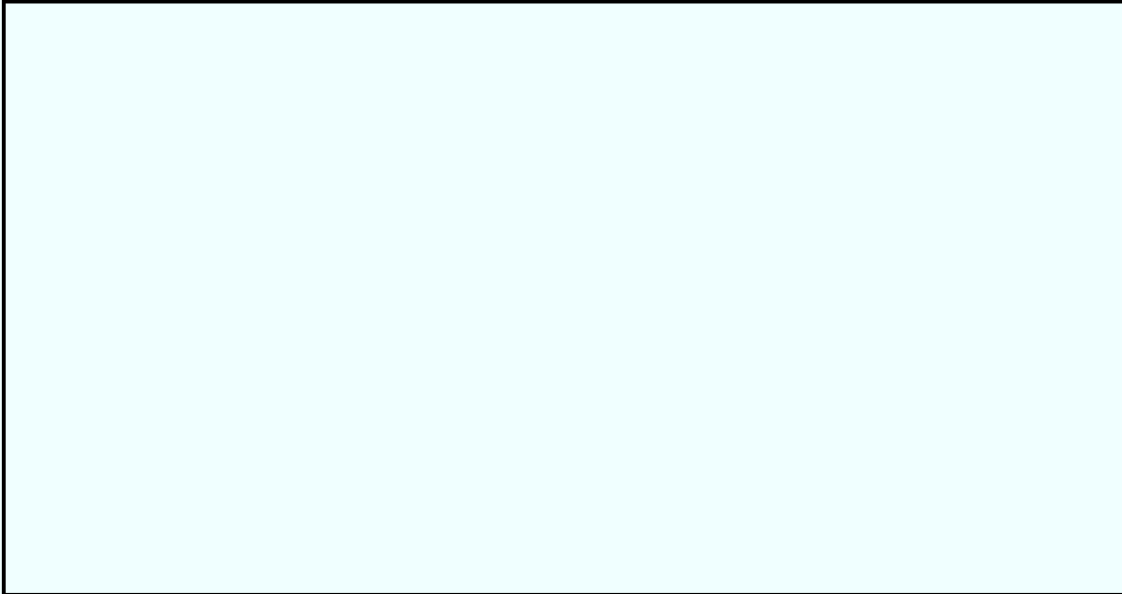
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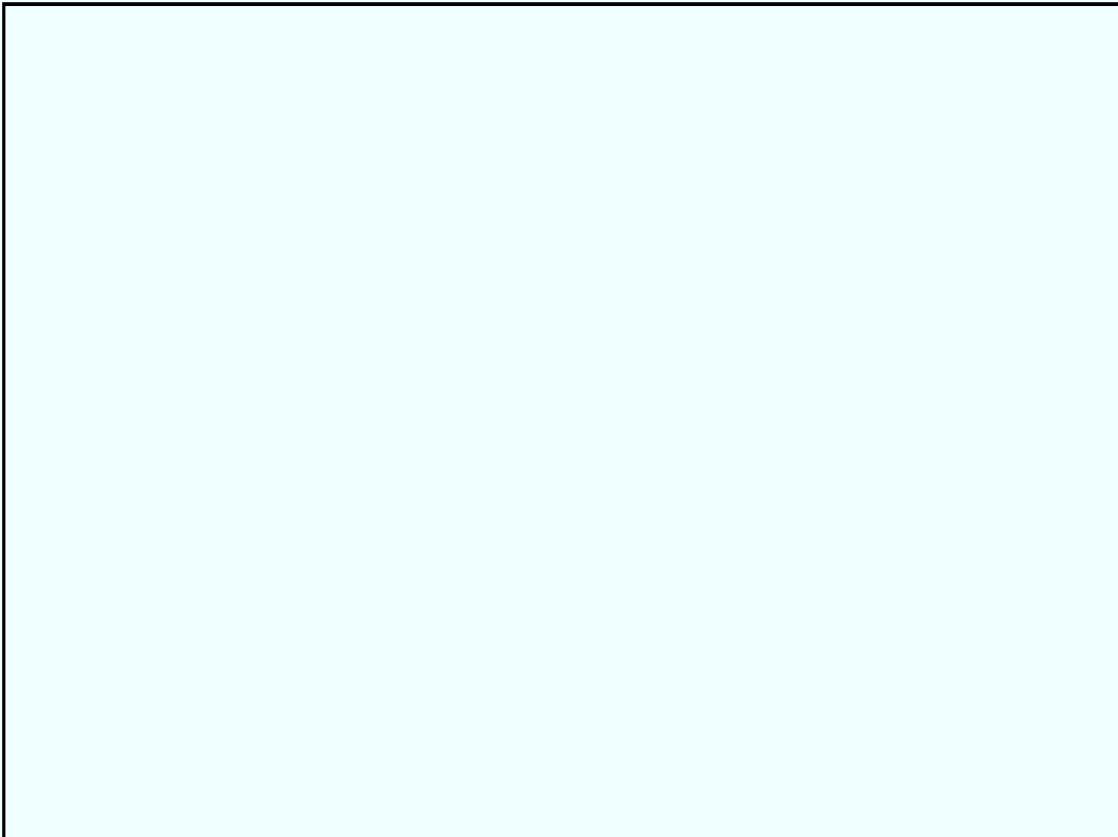
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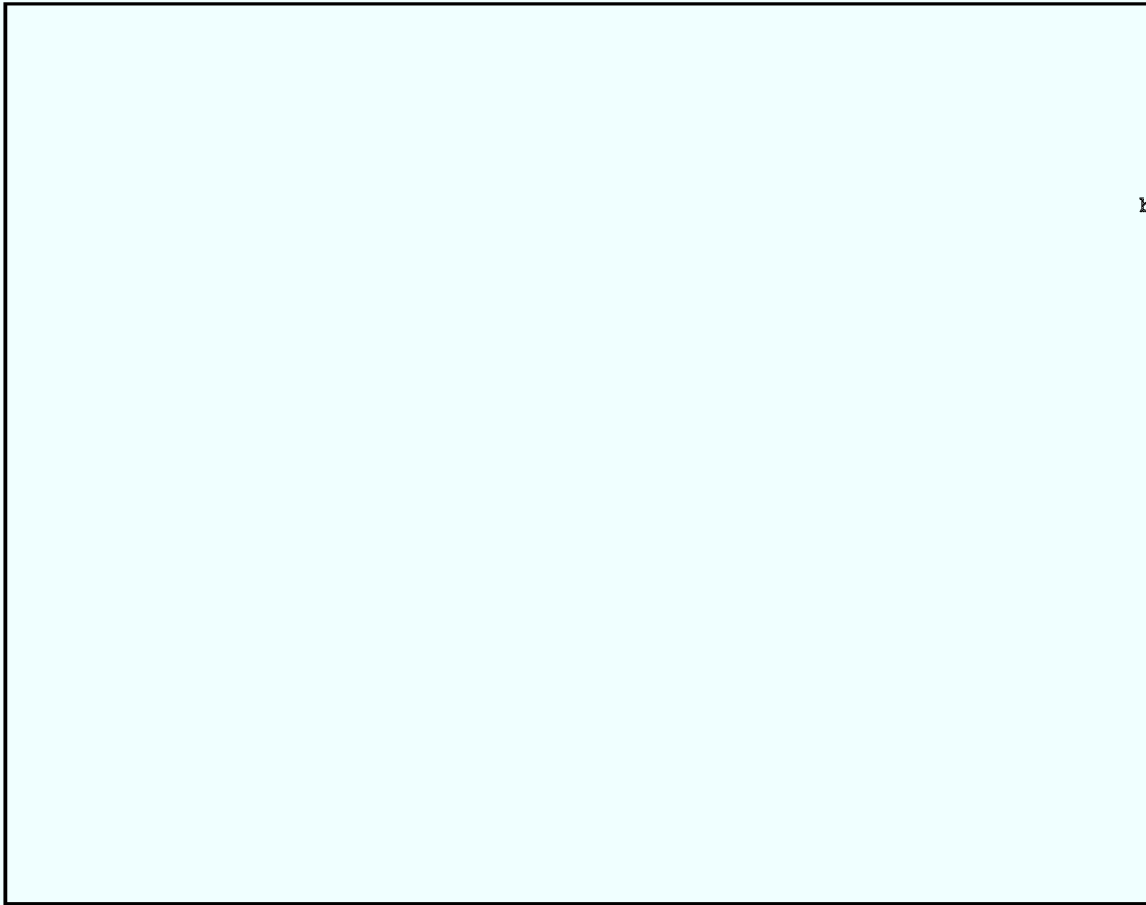
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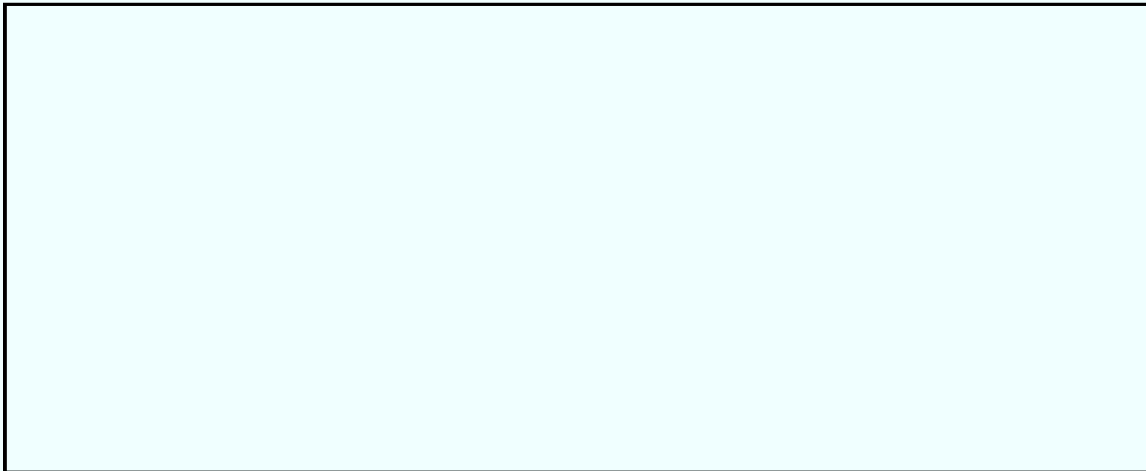


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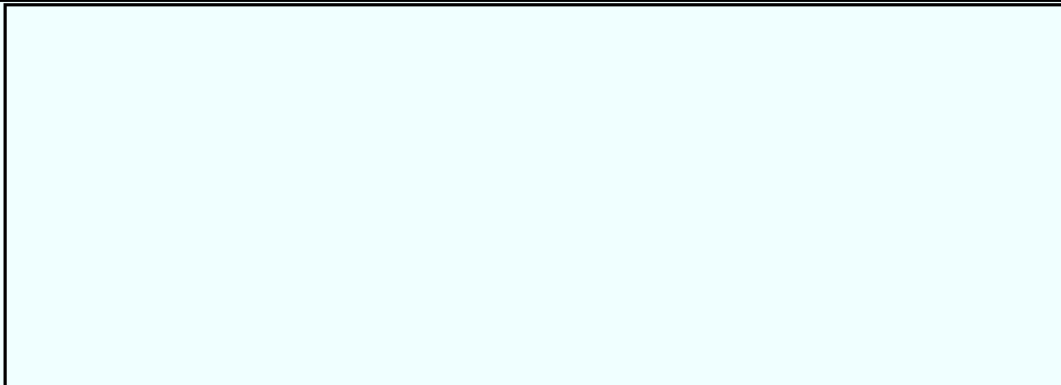
FISA



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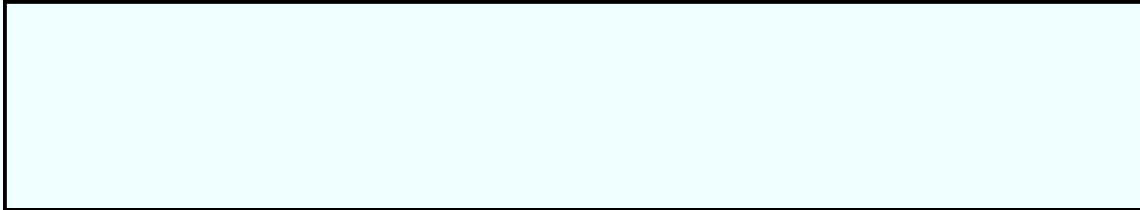
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2. Privacy Act/FOIPA Proposals

A. Amend the Privacy Act as follows:

A BILL



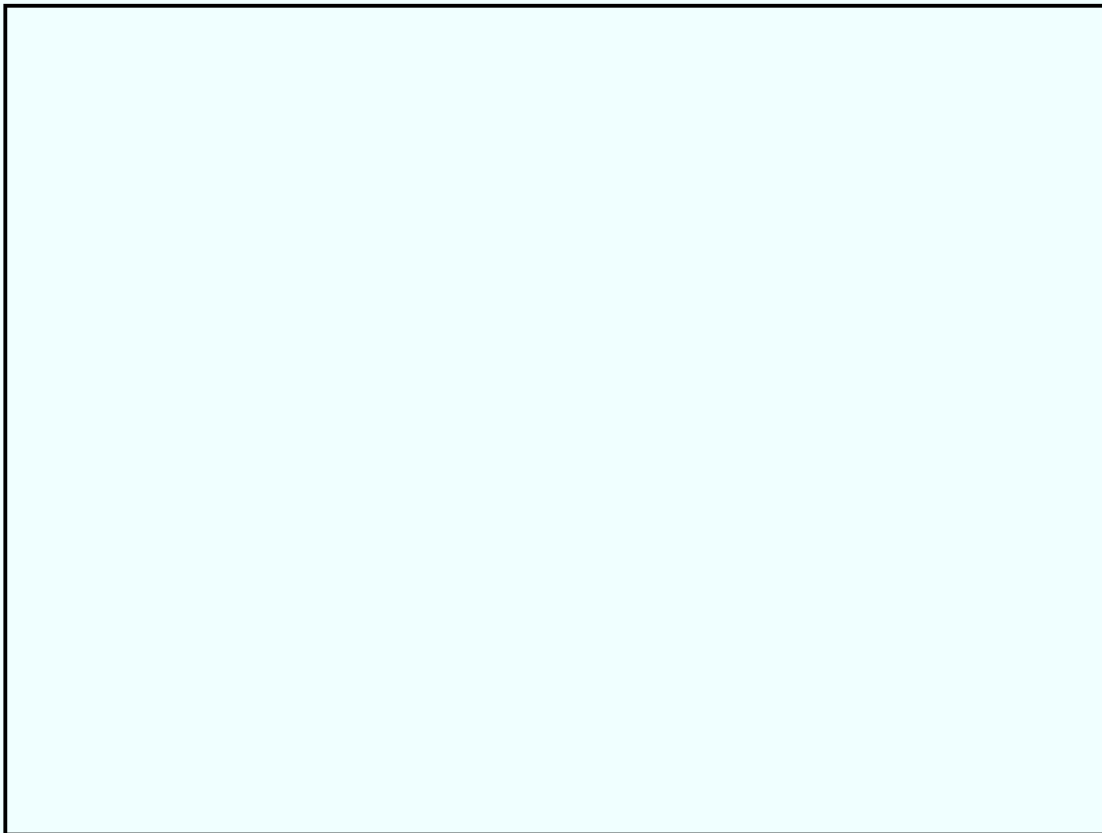
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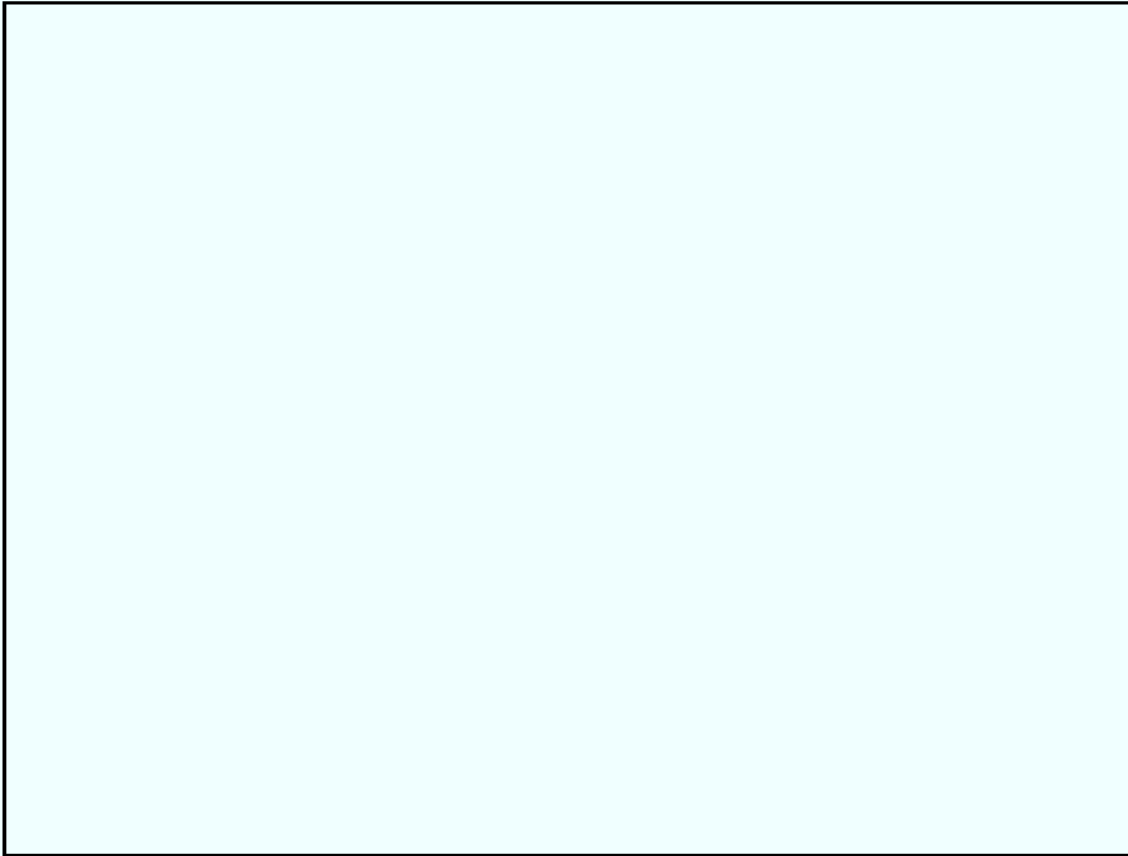


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**SECTION 2. PROTECTING SENSITIVE LAW ENFORCEMENT AND NATIONAL
SECURITY RECORDS FROM DISCLOSURE**



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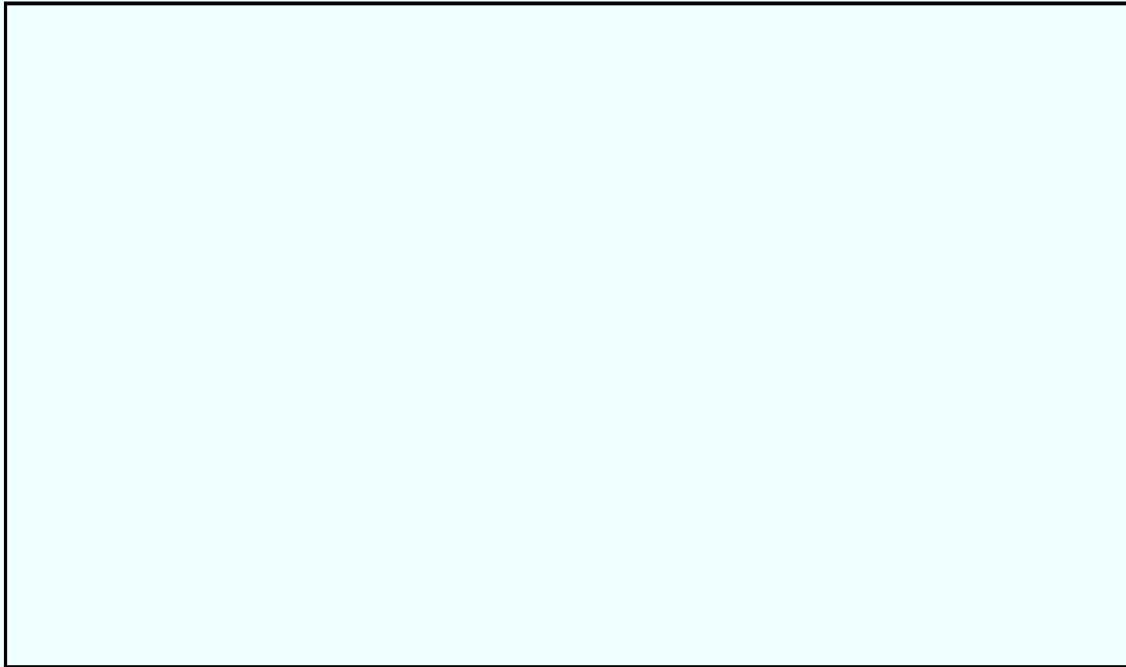
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SECTION 3. AUTHORITY TO OBTAIN OFFICIAL INFORMATION

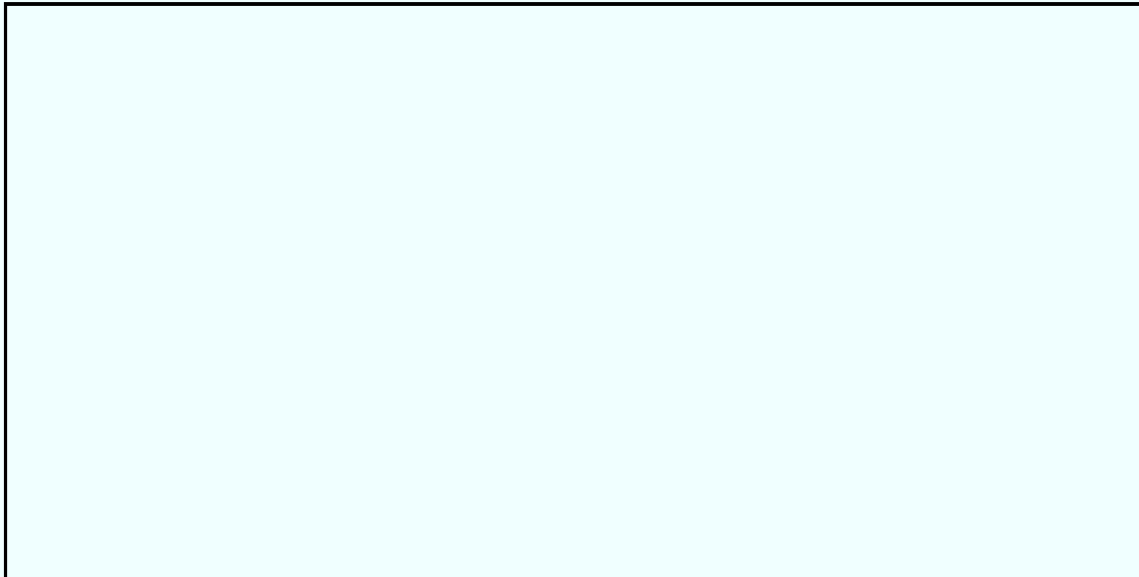


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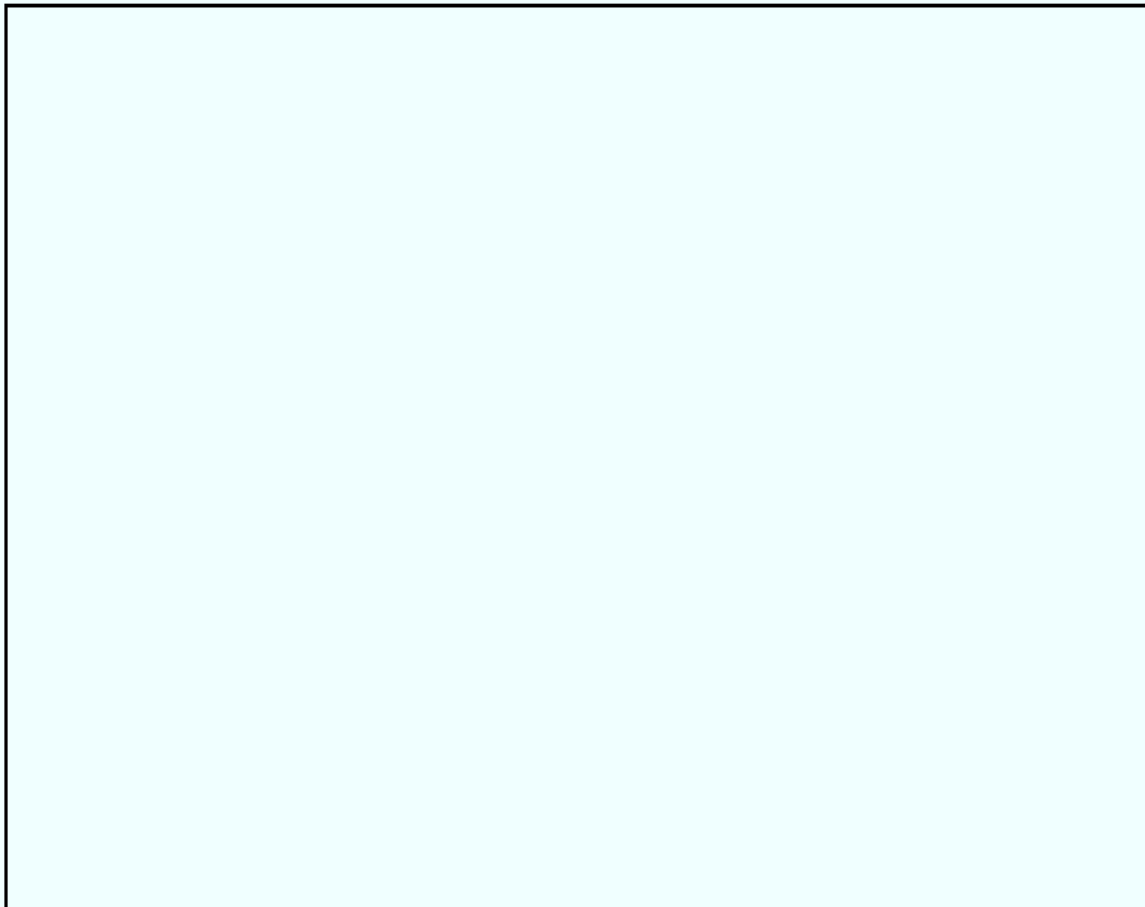
SECTION-BY-SECTION ANALYSIS OF THE PROPOSED AMENDMENTS
TO THE PRIVACY ACT



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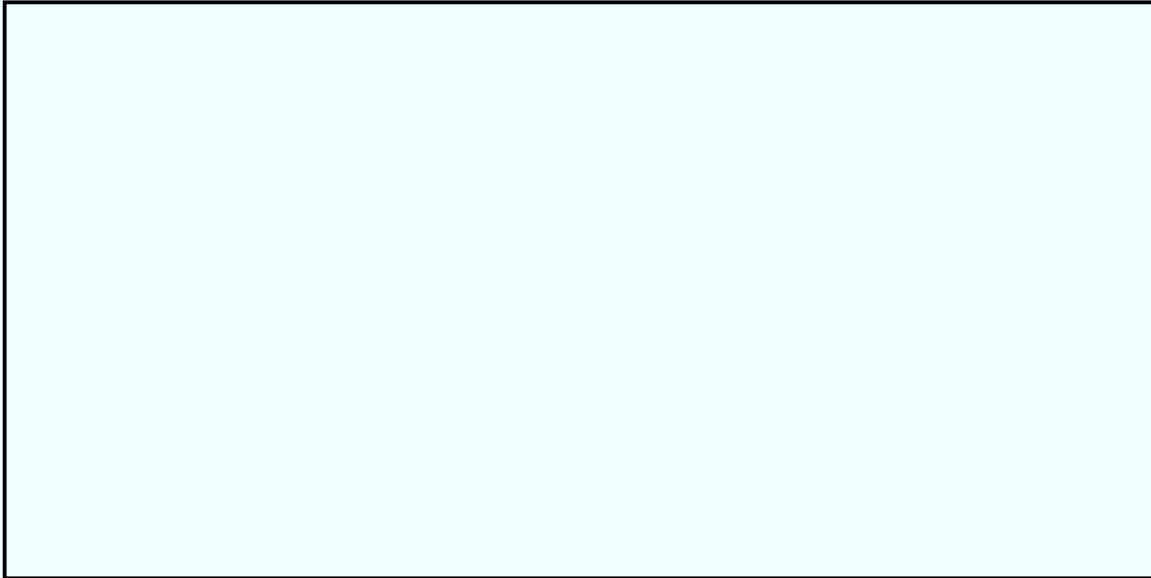
B. Amend FOIPA as follows:

A BILL



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SECTION 2. PROHIBITING FREEDOM OF INFORMATION ACT REQUESTS BY
FOREIGN PERSONS AND SUSPECTED TERRORISTS



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SECTION 3. PRESERVING THE USE OF EXEMPTIONS



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SECTION 4. DELAYED DISCLOSURE OF SENSITIVE TECHNICAL DATA

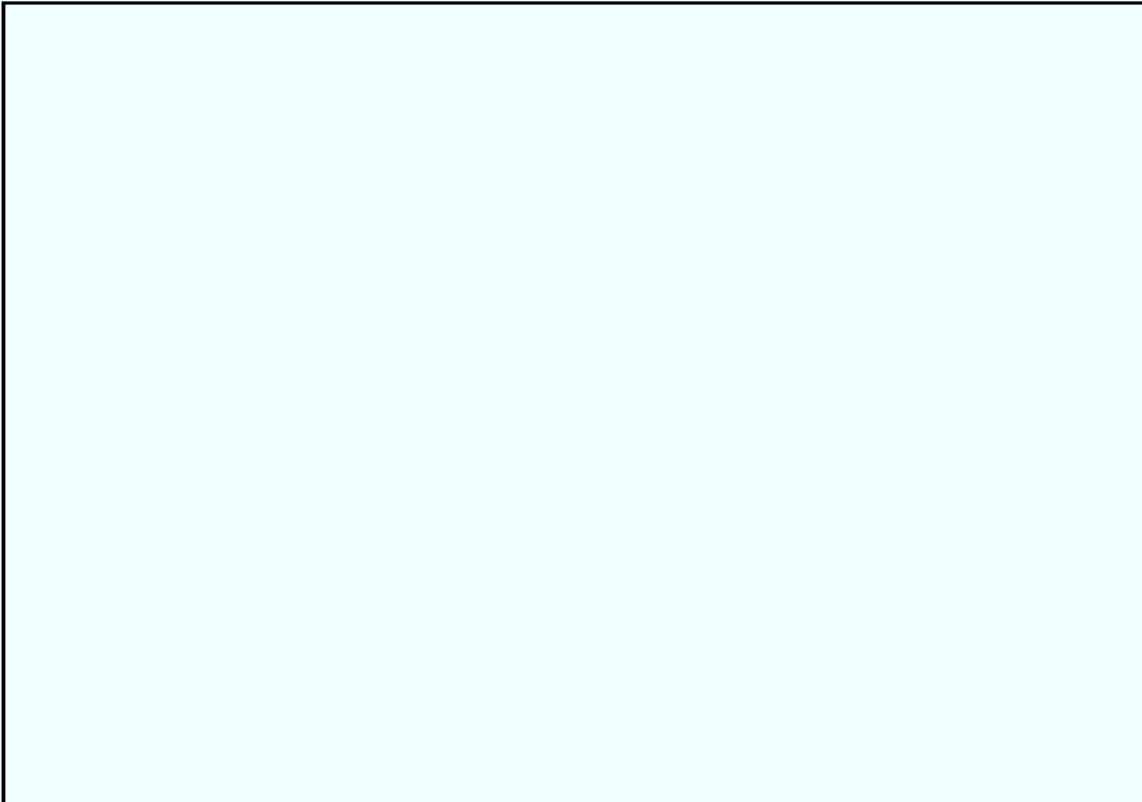


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SECTION 5. PROTECTING SENSITIVE LAW ENFORCEMENT RECORDS FROM
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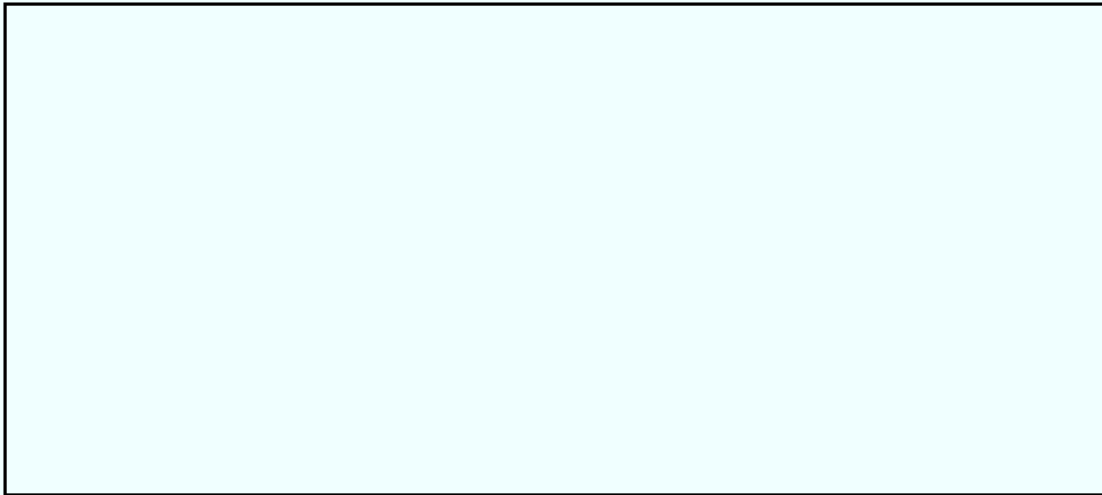


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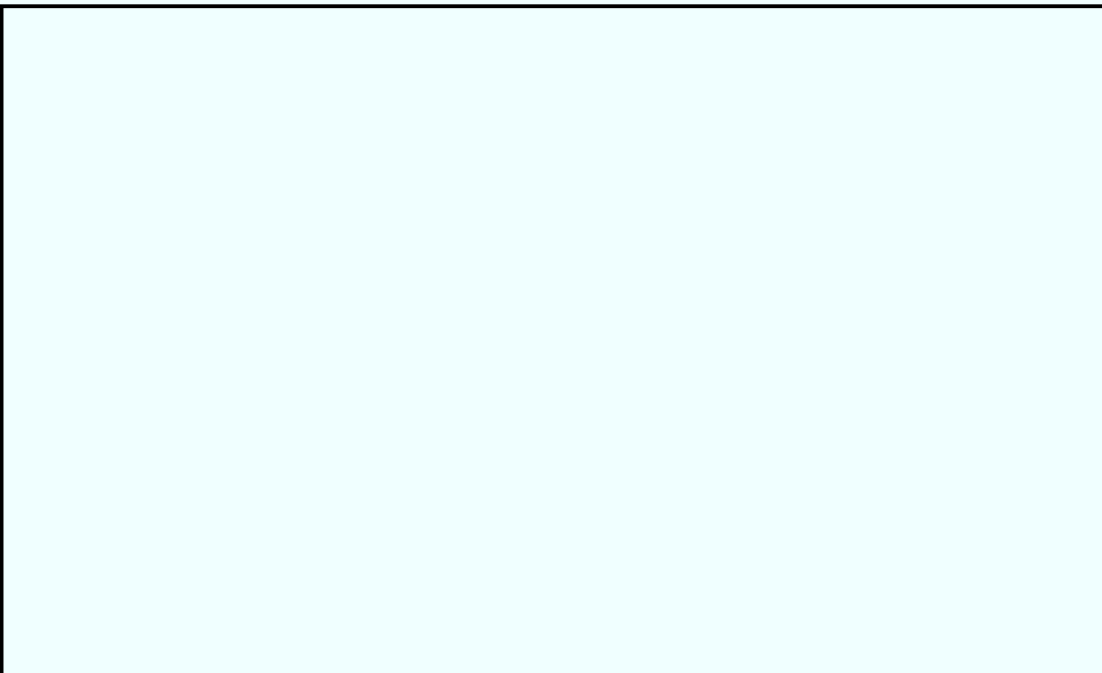
SECTION-BY-SECTION ANALYSIS OF THE PROPOSED AMENDMENTS
TO THE FREEDOM OF INFORMATION ACT



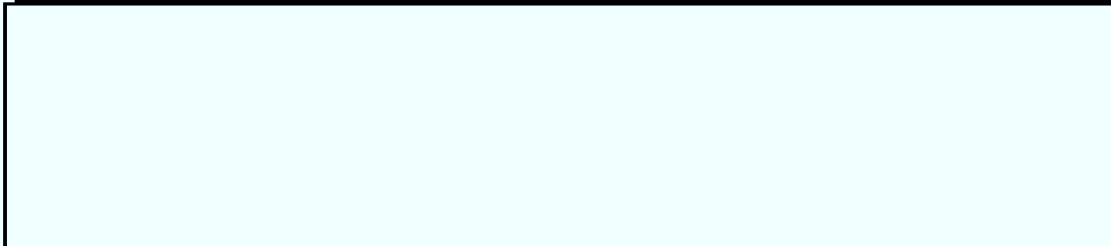
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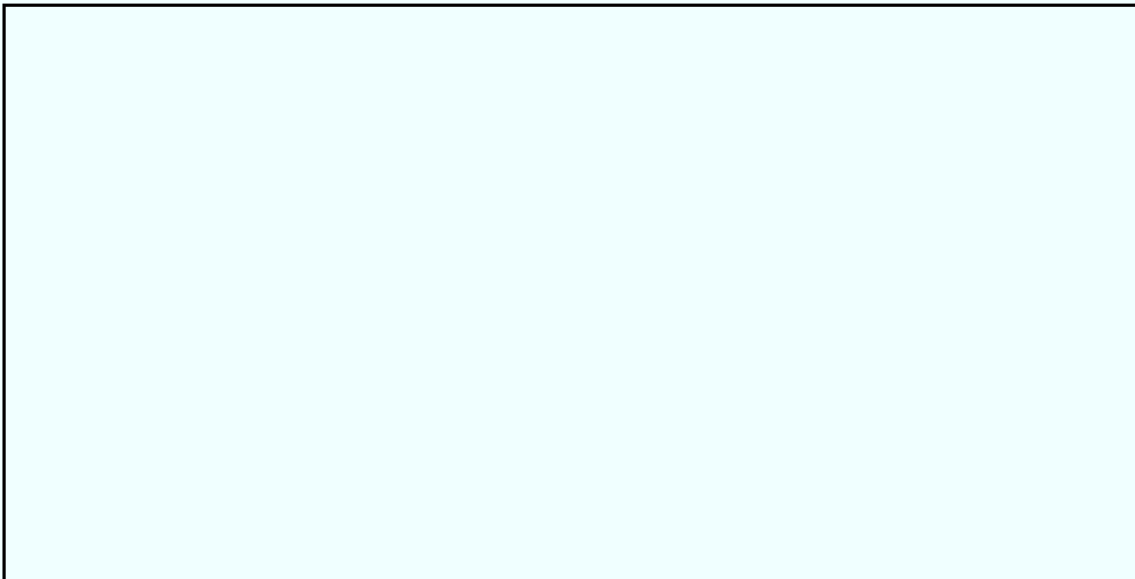
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3. Amend the National Crime Prevention and Privacy Compact Act of 1998



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4. Amend CALEA (Communications Assistance for Law Enforcement Act)



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[Redacted]

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2.

SEC. 107. TECHNICAL REQUIREMENTS AND STANDARDS; EXTENSION OF COMPLIANCE DATE.

[Redacted]

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[Redacted]

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3.

SEC. 108. ENFORCEMENT ORDERS.

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SEC. 102. DEFINITIONS.

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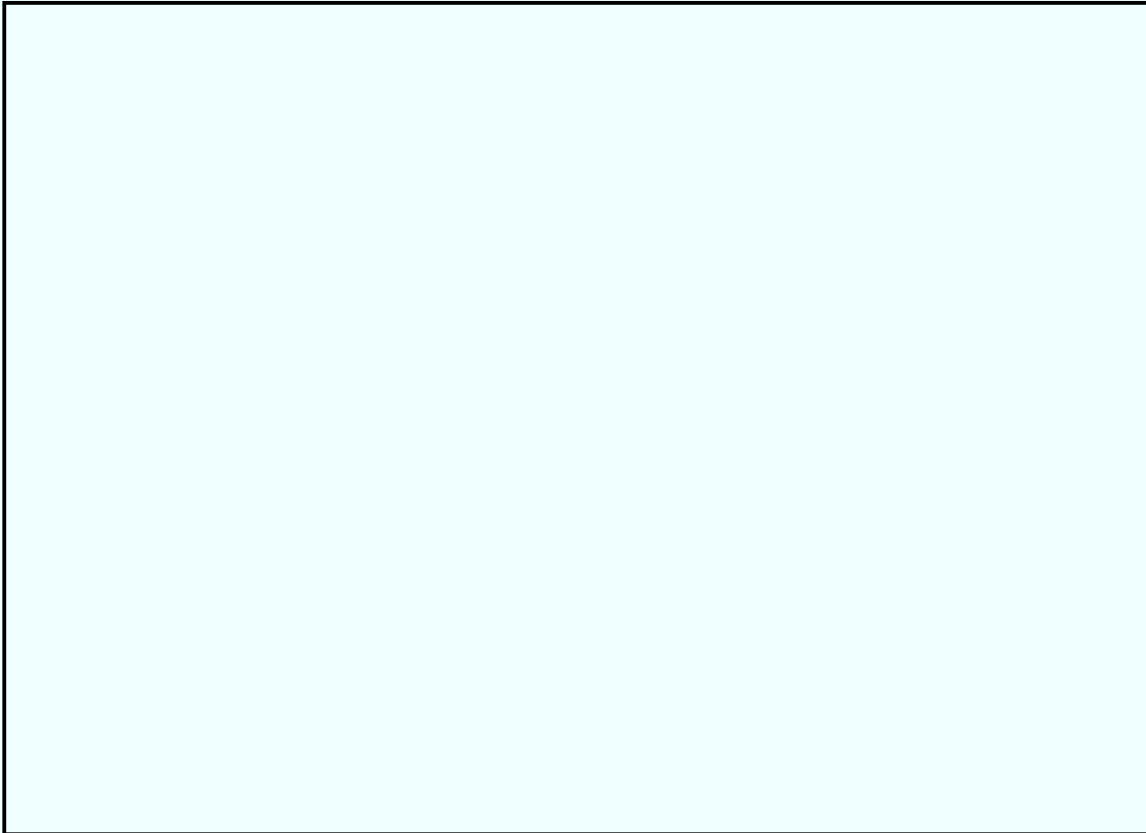
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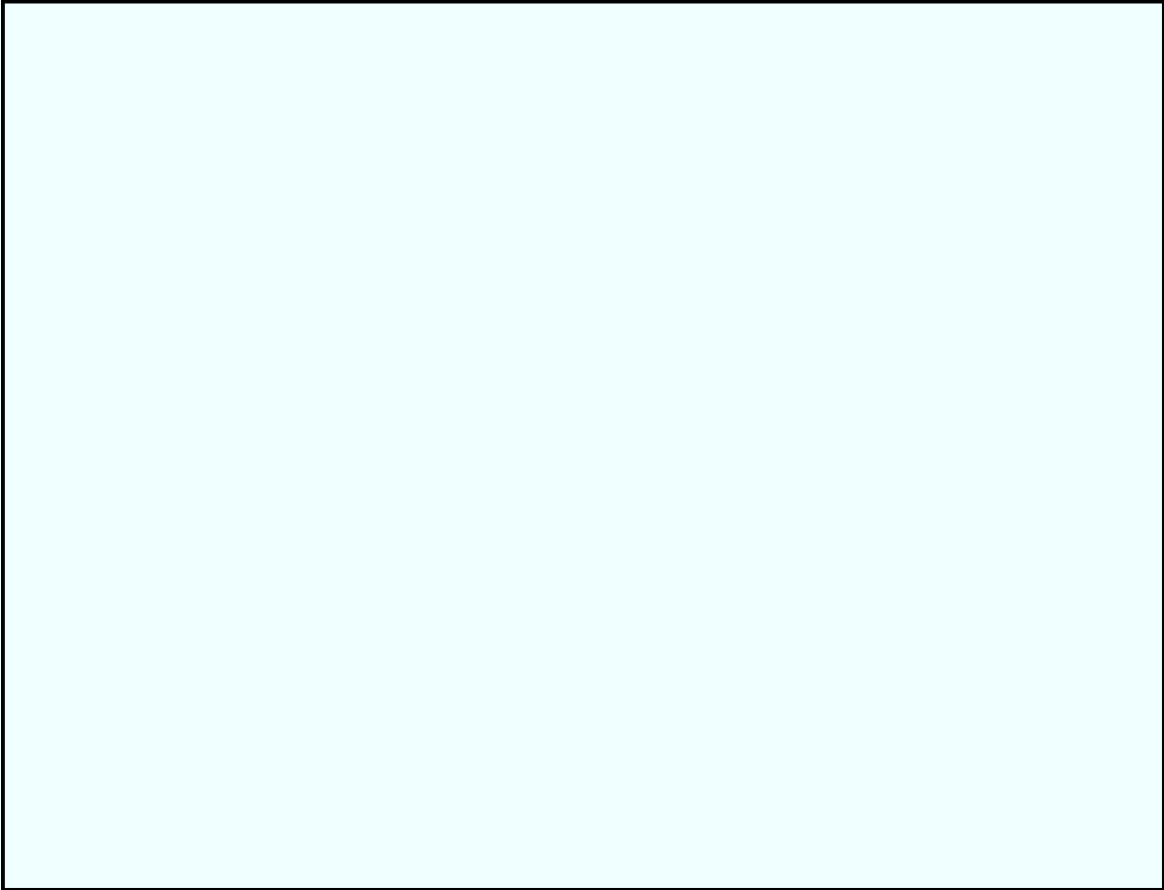


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SEC. 103. ASSISTANCE CAPABILITY REQUIREMENTS.



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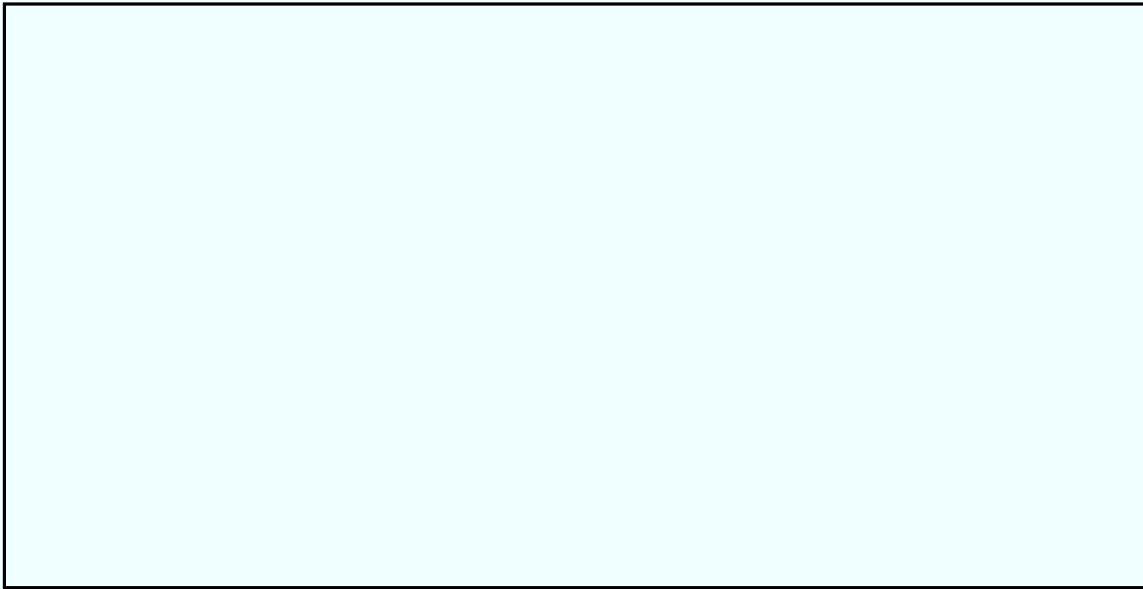


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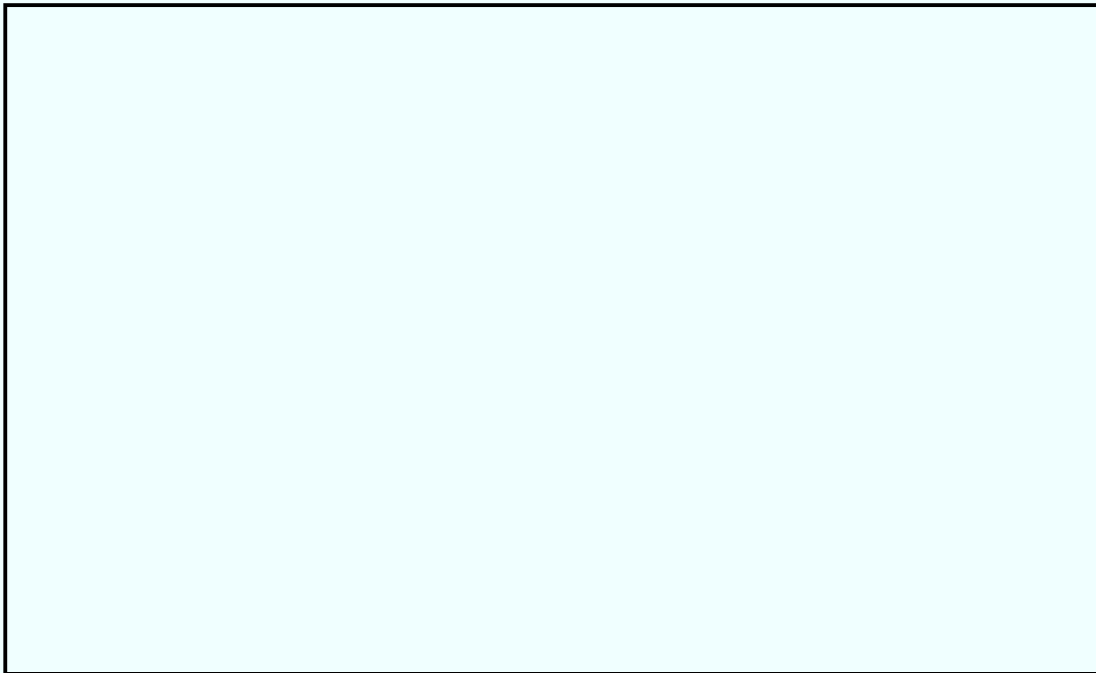
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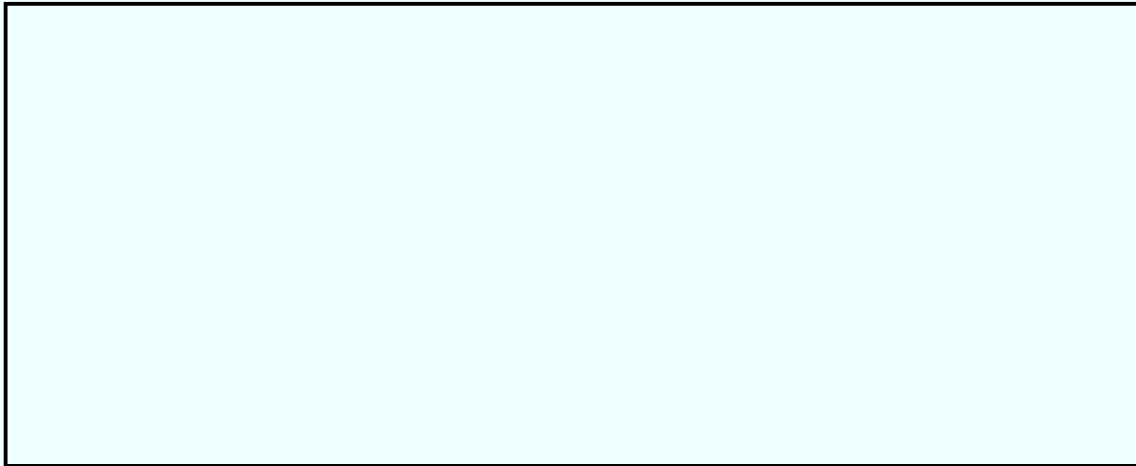


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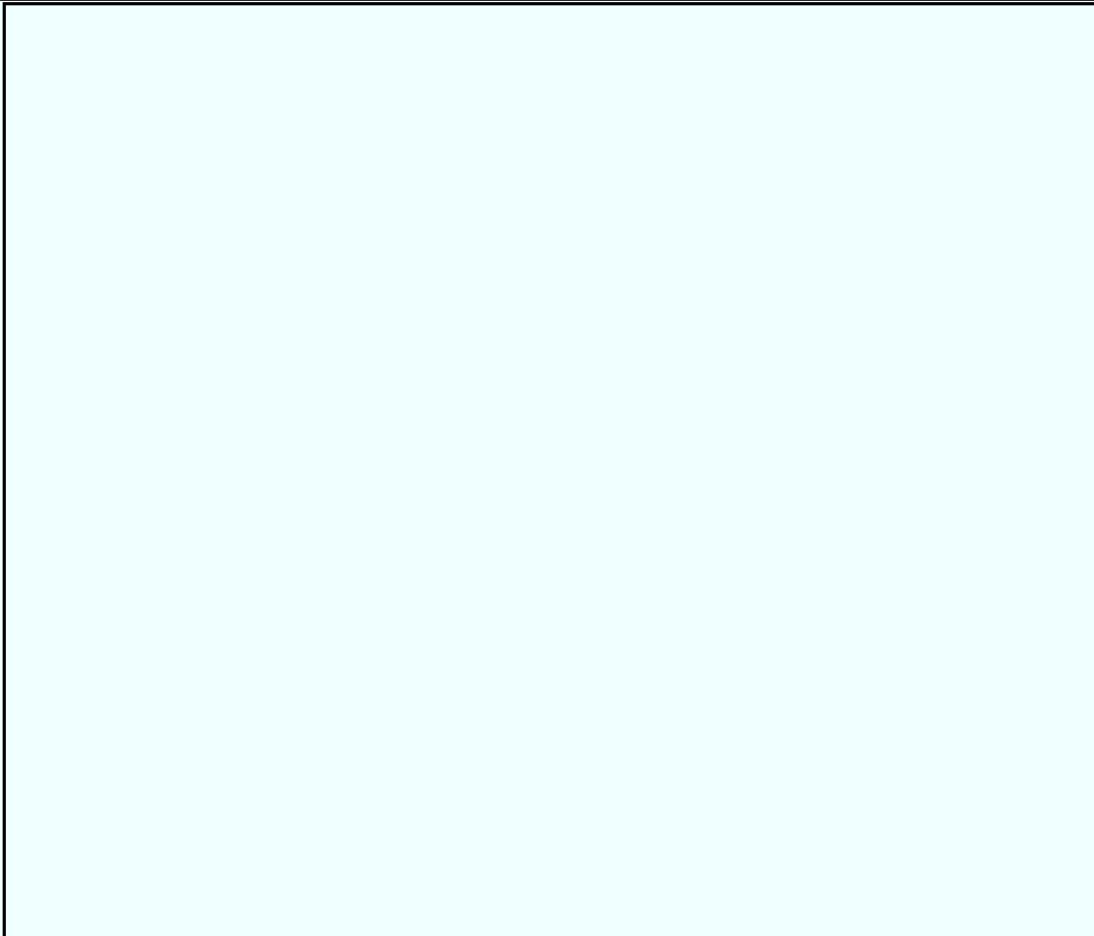
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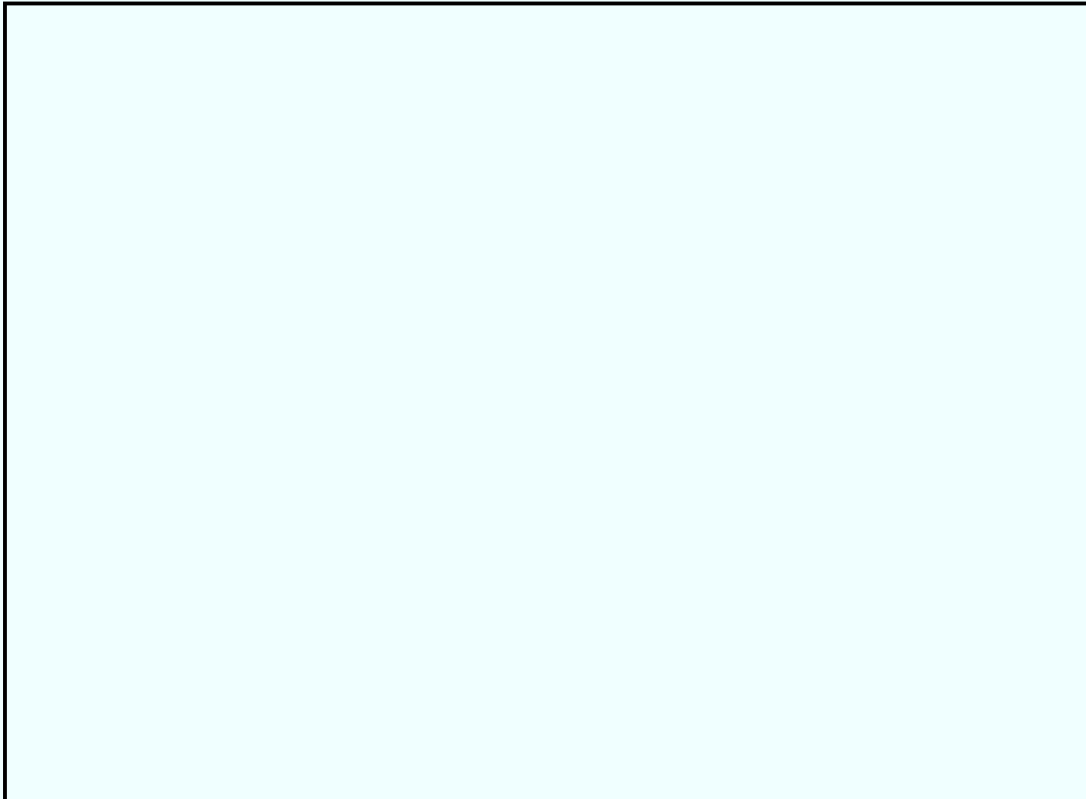
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5. Other Proposals

[Redacted]

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Draft—January 9, 2003

DOMESTIC SECURITY ENHANCEMENT ACT OF 2003

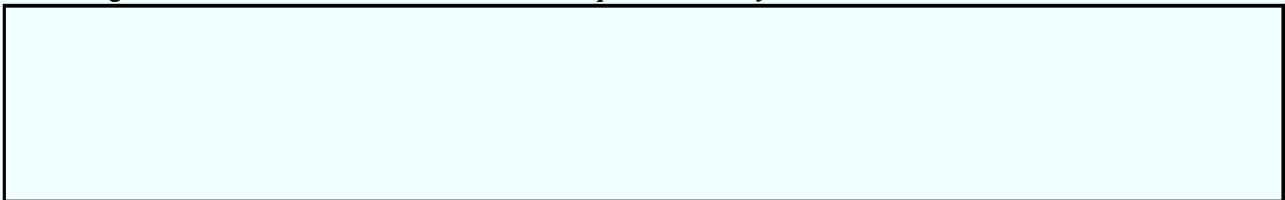
SECTION-BY-SECTION ANALYSIS

Title I: Enhancing National Security Authorities

Subtitle A: Foreign Intelligence Surveillance Act Amendments

Section 101: Individual Terrorists as Foreign Powers.

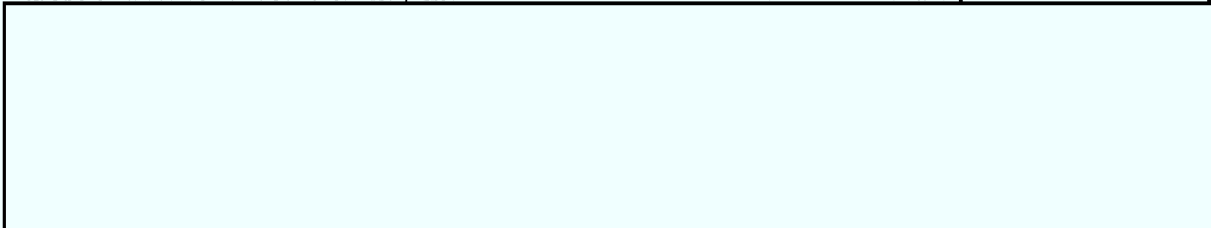
Under 50 U.S.C. § 1801(a)(4), the definition of "foreign power" includes groups that engage in international terrorism, but does not reach unaffiliated individuals who do so. As a result, investigations of "lone wolf" terrorists or "sleeper cells" may not be authorized under FISA.



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Section 102: Clandestine Intelligence Activities by Agent of a Foreign Power.

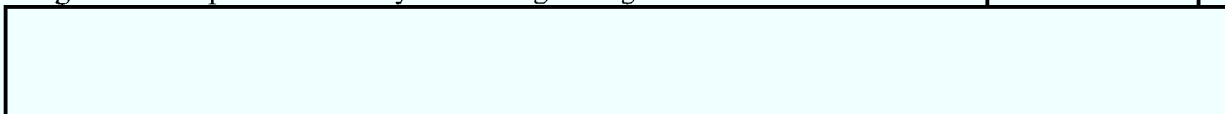
FISA currently defines "agent of a foreign power" to include a person who knowingly engages in clandestine intelligence gathering activities on behalf of a foreign power—but only if those activities "involve or may involve a violation of" federal criminal law.



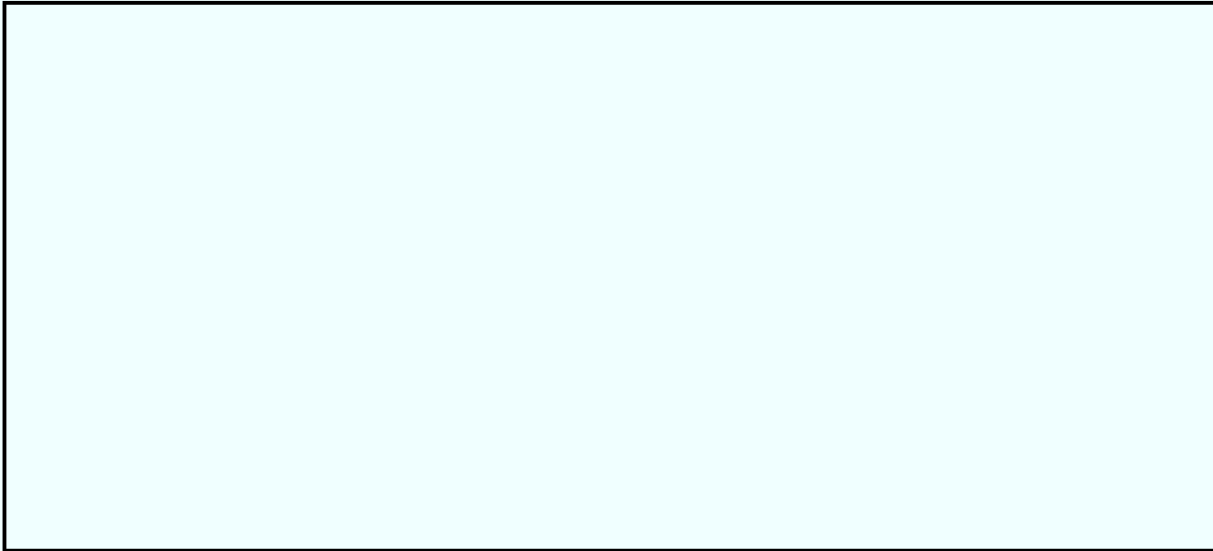
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Section 103: Strengthening Wartime Authorities Under FISA.

Under 50 U.S.C. §§ 1811, 1829 & 1844, the Attorney General may authorize, without the prior approval of the FISA Court, electronic surveillance, physical searches, or the use of pen registers for a period of 15 days following a congressional declaration of war.



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Title II: Protecting National Security Information

Section 201: Prohibition of Disclosure of Terrorism Investigation Detainee Information.

In certain instances, the release of information about persons detained in connection with terrorism investigations could have a substantial adverse impact on the United States' security interests, as well as the detainee's privacy. *Cf. North Jersey Media Group, Inc. v. Ashcroft*, 308 F.3d 198, 217-19 (3d Cir. 2002). Publicizing the fact that a particular alien has been detained could alert his coconspirators about the extent of the federal investigation and the imminence of their own detention, thus provoking them to flee to avoid detention and prosecution or to accelerate their terrorist plans before they can be disrupted.



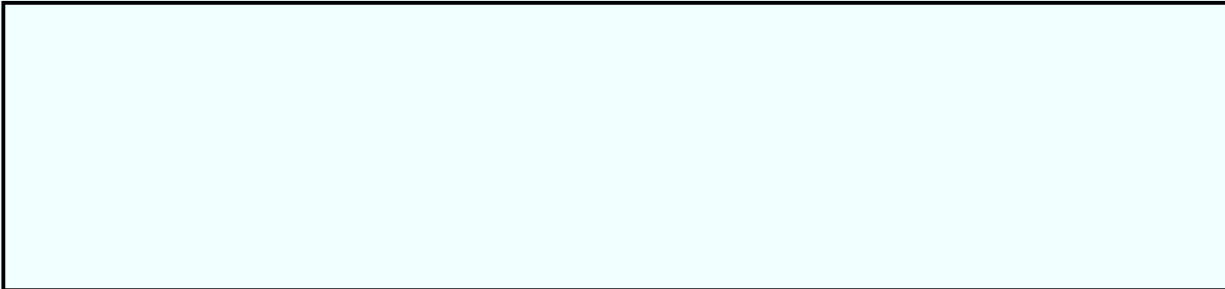
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Section 202: Distribution of "Worst Case Scenario" Information.

Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), requires private companies that use potentially dangerous chemicals to submit to the Environmental Protection Agency a "worst case

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Draft—January 9, 2003

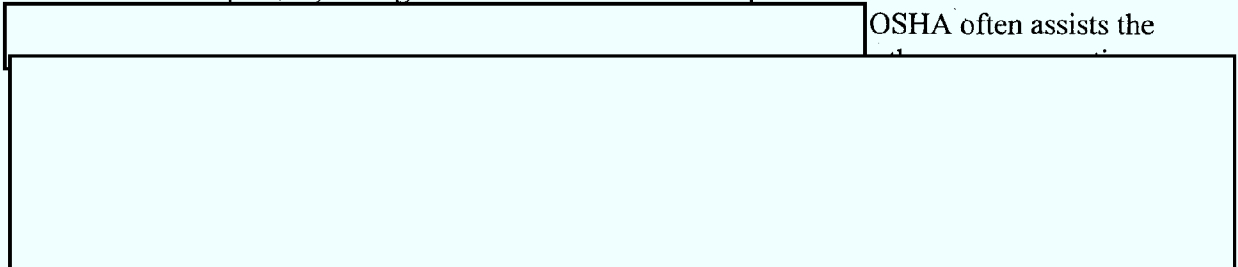
scenario” report detailing what would be the impact on the surrounding community of release of the specified chemicals. Such reports are a roadmap for terrorists, who could use the information to plan attacks on the facilities.



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Section 203: Information Relating to Capitol Buildings.

The Congressional Accountability Act of 1995, 2 U.S.C. § 1301 et seq., establishes the Office of Compliance, a congressional office that has the power to enforce OSHA standards with

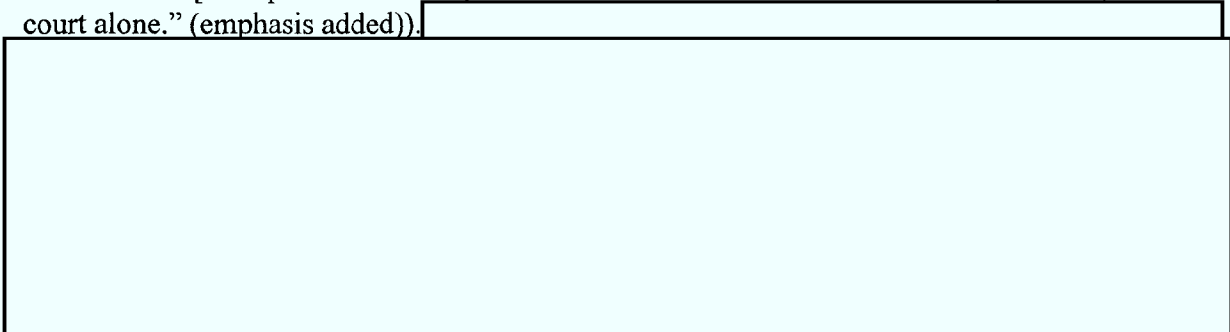


OSHA often assists the

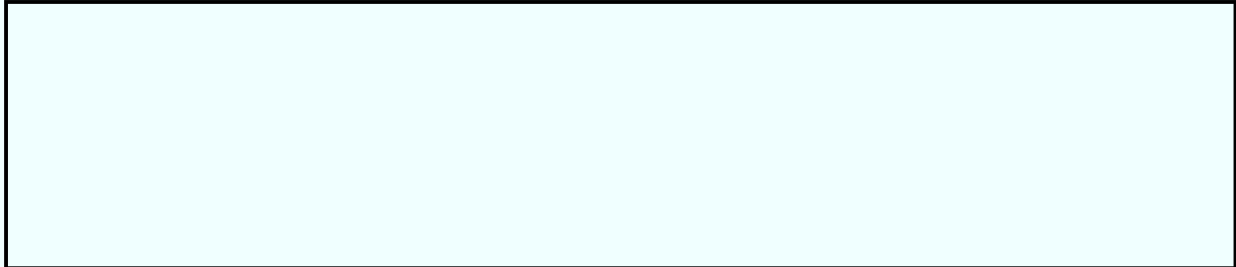
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Section 204: Ex Parte Authorizations Under Classified Information Procedures Act.

Under the current version of the Classified Information Procedures Act, 18 U.S.C. App. 3 §§ 1-16, courts have discretion over whether to approve the government’s request for a CIPA authorization—which enables the submission of sensitive evidence ex parte and in camera. See 18 U.S.C. App. 3 § 4 (“The court *may* permit the United States to make a request for such authorization [for a protective order] in the form of a written statement to be inspected by the court alone.” (emphasis added)).



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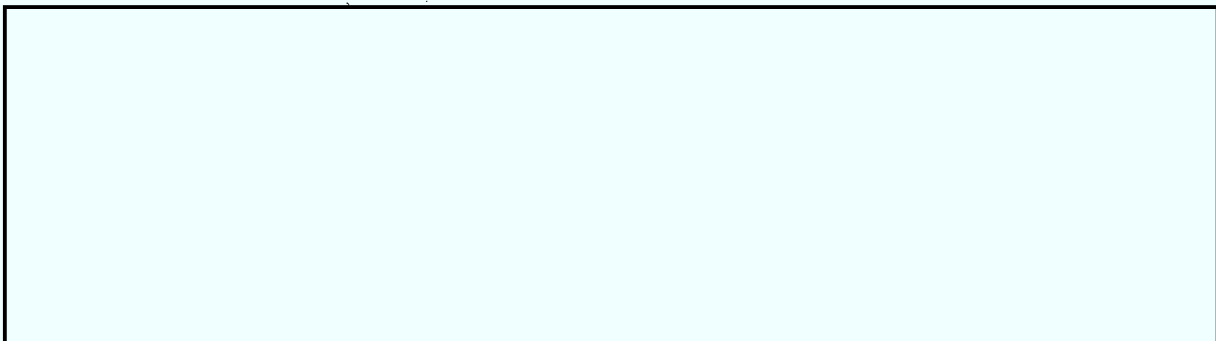
Section 205: Exclusion of United States Security Requirements from Gross Income of Protected Officials.

Under current tax law, certain federal officials—those whose movements are restricted, or who are required to use specific facilities, for their physical protection in the interest of the United States' national security—may be taxed on the value of these protective “services.” See 26 C.F.R. 1.132-5(m) (describing the circumstances under which police protection and related transportation expenses may be deemed to be working condition fringe benefits)



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Section 206: Grand Jury Information in Terrorism Cases.



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MEMORANDUM TO:

[Redacted]

OLC

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FROM:

FBI-OGC / *C. Steele*

SUBJECT:

Comments on 1-9-03 Draft of Domestic Security Enhancement Act

DATE:

January 14, 2003

[Redacted]

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Additional Comments:

[Redacted]

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From: [redacted]
To: [redacted]
Date: 1/14/03 10:06AM
Subject: Comments on statute

[redacted]
Here is a draft. Please feel free to make any edits. As you will see, I put in some language in support of [redacted] [redacted] has seen this, but I am copying him. I am supposed to start a meeting at 10:15 that will take a while, so I am hoping that you can fax this to [redacted] (or I guess [redacted] can e-mail it). The fax number for [redacted]
Pat

b2

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CC: [redacted]

b7C

MEMORANDUM TO:

[Redacted]

OLC

b6

FROM:

FBI-OGC

b7C

SUBJECT:

Comments on 1-9-03 Draft of Domestic Security Enhancement Act

DATE:

January 14, 2003

[Redacted]

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[Redacted]

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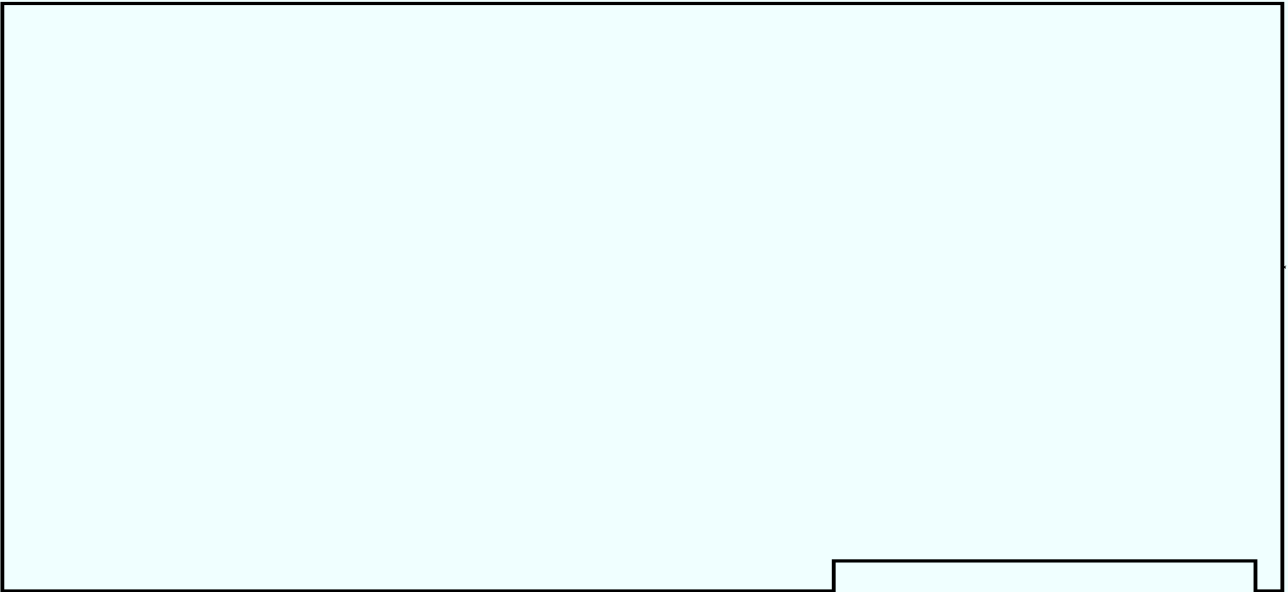
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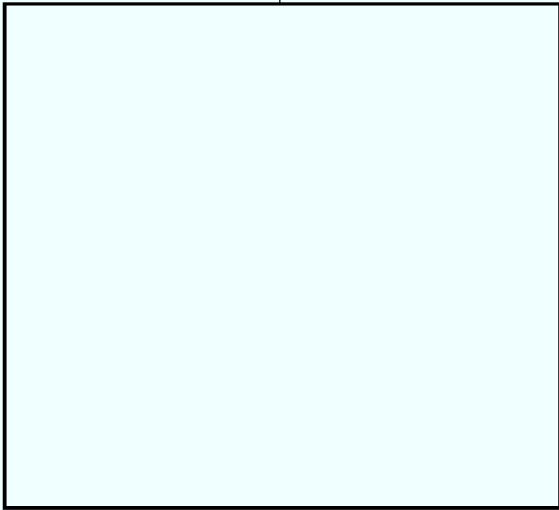
Additional Comments:

[Redacted]

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Spill's top 2 legislative

issues:

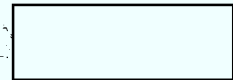
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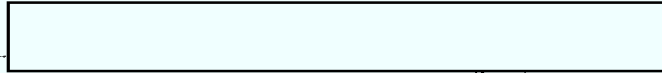
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Section 102 - Probable Cause

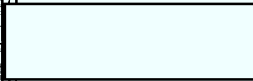
"reasonable belief" seems consistent w/ Gatz - "fair probability" that the contention is true.

103

103



Section 108
111



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126

128 -



Section 205 -



Trying to get pre-clearance -

Anticipate a more general circulation around the Rpt.

109 - Enforcement of Order

Section 206

Rule 6(e) - serving requirement extends to witnesses



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Business Record NOT See Letters

On Credit Report NSL

Extended Person NSL

But have Admin

Subpoena Power

NSL Enforcement Mechanism

Not See Mail Carriers

Tax Return Info

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DATE 09-07-2005 BY 65179DMH/lr2 Ca#05-CV-0845

From: [redacted]
To: Kelley, PATRICK; [redacted] b6
Date: 1/13/03 12:49PM [redacted] b7C
Subject: Patriot 2

[redacted] Attached below are ALU's comments on OLP's 1/9 draft. (These are essentially the same as the comments we sent you on 1/8 re the 12/16 draft, and the e-mail observations below likewise apply to the 1/9 draft.) From ALU's perspective, the two drafts are essentially the same in not adopting (apart from a couple painfully narrow items) any of ALU's comments you sent to OLP on 11/15.

>>> PATRICK Kelley 01/10/03 08:54AM >>>

My quick review of the Jan. 2, edition fails to reflect any of ALU's suggested changes. May be that I missed them because the comments are keyed to the bill and I don't have a copy of the bill.

>>> PATRICK Kelley 01/10/03 08:37AM >>>

b6 [redacted] concur. However [redacted] gave me yesterday a Section-by Section Analysis dated Jan. 2nd. I didn't
b7C get the rest of the bill but I will send you what I have.

> [redacted] 01/08/03 11:28AM >>>

[redacted] attached are our comments.

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CC: Bowman, MARION; [redacted] Hardy, David; [redacted] b6
[redacted] b7C

Sensenbrenner Responses

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FEDERAL BUREAU OF INVESTIGATION
FOIPA
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Total Deleted Page(s) ~ 147

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Message

~~SECRET~~

DATE: 12-06-2005
CLASSIFIED BY 65179 DMH/LP/DPW
REASON: 1.4 ((C) 05-CV-0845)
DECLASSIFY ON: 12-08-2030

FOIA
Page 1 of 3

[REDACTED] (OGC) (FBI)

From: [REDACTED] (OGC) (FBI) b6

Sent: Monday, June 07, 2004 11:56 AM b7C

To: [REDACTED] (OGC) (FBI)

Subject: RE: Draft Response to Sen. Feinstein on Sunset Provisions of the USA Patriot Act

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WHERE SHOWN OTHERWISE

UNCLASSIFIED
NON-RECORD

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It was [REDACTED] call, and I agree with him. [REDACTED]

b5

(S)

(S)

b6

-----Original Message-----

From: [REDACTED] (OGC) (FBI)

b7C

Sent: Monday, June 07, 2004 11:20 AM

b6

To: [REDACTED] (OGC) (FBI)

b7C

Subject: RE: Draft Response to Sen. Feinstein on Sunset Provisions of the USA Patriot Act

UNCLASSIFIED
NON-RECORD

Can I forward this to OCA? [REDACTED]

b5

-----Original Message-----

From: [REDACTED] (OGC) (FBI)

b6

Sent: Monday, June 07, 2004 11:13 AM

b7C

To: [REDACTED] (OGC) (FBI)

Subject: RE: Draft Response to Sen. Feinstein on Sunset Provisions of the USA Patriot Act

UNCLASSIFIED
NON-RECORD

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-----Original Message-----

From: [REDACTED] (OGC) (FBI)

Sent: Monday, June 07, 2004 11:00 AM

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To: [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI)

6/22/2005

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Cc: BOWMAN, MARION E. (OGC) (FBI)

Subject: FW: Draft Response to Sen. Feinstein on Sunset Provisions of the USA Patriot Act

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I know it is really short notice (I advised OCA that I did not think we could get our comments to them by 11:00 am) but if you have comments please let us know.

-----Original Message-----

From: [REDACTED] (OCA) (FBI)

Sent: Monday, June 07, 2004 9:06 AM

To: [REDACTED] (OGC) (FBI); BOWMAN, MARION E. (OGC) (FBI); [REDACTED] (OGC) (FBI); [REDACTED] (CID) (FBI); [REDACTED] (CID) (FBI); [REDACTED] (CD) (FBI); [REDACTED] (CD) (FBI); [REDACTED] (FBI); [REDACTED] (CTD) (FBI); [REDACTED] (CTD) (FBI); [REDACTED] (DO) (FBI); [REDACTED] (DO) (FBI)

Subject: Draft Response to Sen. Feinstein on Sunset Provisions of the USA Patriot Act

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~~UNCLASSIFIED~~
~~NON-RECORD~~

The attached testimony is being given before Congress. Please review the testimony and provide your comments, if any, to CAO. Please indicate if your division is in favor or opposed to the testimony as well as the reasons for your division's position. If your division opposes the testimony fully or in part, but believes that it can be remedied by changes in the verbiage, please describe in detail what should be added, deleted, or changed, including recommendations for substitute language sufficient to correct the objectionable section(s).

Please E-mail your comments to SSA [REDACTED] with a cc to [REDACTED]

[REDACTED] Your comments should be prepared in Microsoft Word format which is suitable for dissemination to DOJ and to congressional staff. Please send these comments to the CAO contact person as an attachment to your E-mail. If you have additional comments which are not suitable for dissemination, please include them in the body of your E-mail separate and apart from the attachment. If your division is not taking position and has no comments, please send an E-mail to the CAO contact person stating such.

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DEADLINE 11:00 am 6-7-04. We appreciate your attention to this matter.

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6/22/2005

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WHERE SHOWN OTHERWISEDATE: 12-07-2005
CLASSIFIED BY 65179 DMH/LP/DFW
REASON: 1.4 ((c) 06-CV-0845)
DECLASSIFY ON: 12-07-2030

[REDACTED] (OGC) (FBI)

From: [REDACTED] (Div09) (FBI)

Sent: Tuesday, May 18, 2004 3:08 PM b6

To: [REDACTED] (Div00) (FBI) b7C

Cc: [REDACTED] (Div00) (FBI) [REDACTED] Div09) (FBI) [REDACTED]
[REDACTED] (Div09) (FBI); BOWMAN, MARION E. (Div09) (FBI)

Subject: RE: Statistics re USA PATRIOT Act provisions

~~SENSITIVE BUT UNCLASSIFIED~~
~~NON-RECORD~~~~SECRET~~

b6 b7C

[REDACTED] please be advised that the use of 215 mentioned below just refers to a field office having submitted requests. As of last week, we still had not received a business record order [REDACTED]

[REDACTED] We'll let you know no later than tomorrow what the response is. (S) (S)

b1

-----Original Message-----

From: [REDACTED] (Div09) (FBI)

Sent: Tuesday, May 18, 2004 2:03 PM

To: [REDACTED] (Div00) (FBI); BOWMAN, MARION E. (Div09) (FBI); [REDACTED]
(Div09) (FBI); [REDACTED] (Div09) (FBI)

Cc: [REDACTED] (Div00) (FBI)

Subject: RE: Statistics re USA PATRIOT Act provisions

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~~NON-RECORD~~

[REDACTED] I can provide you the results from the field survey that OGC conducted, however, I can also guarantee that these are not entirely accurate numbers. The field survey was voluntary, and the level of detail provided varied between the field offices. Furthermore, since then I have been advised that some HQ divisions have been utilizing various Patriot Act tools, and I did not receive any contributions from any HQ division on this survey, so their use is not included in any numbers that I have.

The field offices reported the following:

Section 206 - Roving FISA orders [REDACTED] mes (S) b1

Section 215 - Used [REDACTED] additional orders currently in approval process (S) (S)

Section 213 - Delayed Notice for Search Warrants - This is not a sunset provision, so we did not seek field input on this specific provision at this time.

Also - as you are aware, field offices collect statistics on their accomplishments (i.e. search warrants executed). I believe that Finance Division maintains, compiles, and reports these statistics. They may have more accurate field wide numbers.

I hope this is helpful.

[REDACTED]
Assistant General Counsel

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6/22/2005

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Investigative Law Unit
Office of the General Counsel

[REDACTED]

b6

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b2

-----Original Message-----

From: [REDACTED] (Div00) (FBI)**Sent:** Tuesday, May 18, 2004 1:41 PM**To:** BOWMAN, MARION E. (Div09) (FBI); [REDACTED] (Div09) (FBI); [REDACTED]

[REDACTED] (Div09) (FBI); [REDACTED] (Div09) (FBI)

Cc: [REDACTED] (Div00) (FBI)**Subject:** Statistics re USA PATRIOT Act provisions**Importance:** High~~UNCLASSIFIED~~~~NON-RECORD~~

In anticipation of the Director's scheduled appearance before the Senate Judiciary Committee this Thursday, May 20th, we are trying to confirm the number of times we have used Delayed Notice (so-called "Sneak and Peek") Warrants, FISA Roving Wiretaps, and FISA Orders for Tangible Things (i.e., so-called Section 215 Orders), since passage of the USA PATRIOT Act.

I realize there are several potential complications with compiling such numbers (e.g., Delayed Notice Warrants used in traditional criminal cases, classification issues re 215 Orders, etc.). Nevertheless, if any of you could provide some input on this, it would be very helpful. We can almost guarantee the Director will be asked about the numbers when he testifies.

Is DOJ compiling numbers? Is there anyone at OLP or OIPR who may know?

Thanks,

[REDACTED]

Office of Congressional Affairs b2

ext. [REDACTED]

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6/22/2005

Message

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Page 1 of 3

DATE: 12-08-2005
CLASSIFIED BY 65179 DMH/LP/DFW
REASON: 1.4 ((C) 05-CV-0845)
DECLASSIFY ON: 12-08-2030

[REDACTED] OGC) (FBI)

From: [REDACTED] (Div09) (FBI)
Sent: Friday, April 30, 2004 10:51 AM
To: [REDACTED] (Div00) (FBI)
Cc: [REDACTED] (Div09) (FBI); [REDACTED] (Div09) (FBI)
Subject: RE: Tools Question

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I agree with what everyone has said. We have very limited admin subpoena powers, per [REDACTED] email. Section 215 of the Patriot Act gave us a right to get business records [REDACTED]

[REDACTED] However, those records do require a FISA Court order. Admin subpoenas would be better because they do not require a court order. They are more like NSLs, which, as you probably know, are very restricted in scope inasmuch as we can only use them for communications providers, financial institutions, and credit reporting companies. If we simply want to get hotel records, for instance, we have no way of getting them now, and if we start using business records orders, we will have to go through the FISA court to get those. So that is why all this attention is focused on getting admin subpoenas - some way by which we do not have to go to court to get the information.

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-----Original Message-----

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From: [REDACTED] (Div00) (FBI)
Sent: Friday, April 30, 2004 10:41 AM
To: [REDACTED] (Div09) (FBI)
Cc: [REDACTED] (Div09) (FBI)
Subject: RE: Tools Question

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[REDACTED] thanks - you're talking about §215 of the Patriot Act - right? I've attached [REDACTED] response
fyi. If [REDACTED] has any other thoughts, feel free to share. Thanks,

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Office of Congressional Affairs
[REDACTED]

-----Original Message-----

From: [REDACTED] (Div09) (FBI)
Sent: Friday, April 30, 2004 10:38 AM
To: [REDACTED] (Div09) (FBI); [REDACTED] (Div00) (FBI); [REDACTED] (Div09) (FBI)
Cc: [REDACTED] (Div09) (FBI)
Subject: RE: Tools Question

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6/22/2005

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[redacted]
I have a moment.

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We have the right to correct business records under FISA which the PATriot Act gave us.
We have never used this authority.

[redacted] is the expert.

[redacted]

-----Original Message-----

From: [redacted] (Div09) (FBI)**Sent:** Friday, April 30, 2004 10:32 AM**To:** [redacted] (Div00) (FBI); [redacted] (Div09) (FBI); [redacted] (Div09) (FBI)

b6

b7C

Subject: RE: Tools Question~~UNCLASSIFIED~~
~~NON-RECORD~~

[redacted] The FBI has no comparable authority that I know of--and I am not surprised because that summons provision is strictly under Treasury's regulatory function. As I read the statute, the information provided cannot be used for criminal investigative purposes. That same section goes on to establish authority for Suspicious Activity Reports, which the banks are required to file and which are the primary means by which they notify Treasury of potential criminal transactions--which can then be shared with FBI. FBI's admin subpoena authority is limited to 3 areas--drugs under 21 USC 876 and child pornography and health care fraud under 18 USC 3486.

[redacted]

-----Original Message-----

From: [redacted] (Div00) (FBI)**Sent:** Thursday, April 29, 2004 6:08 PM**To:** [redacted] (Div09) (FBI); [redacted] (Div09) (FBI); [redacted] (Div09) (FBI)

b6

b7C

Subject: Tools Question~~UNCLASSIFIED~~
~~NON-RECORD~~

We got the following question from our friends on the House Judiciary Committee who have been looking at NSLs and admin subpoena issues - 31 USC 5318(a)(4) gives the Secretary of the Treasury administrative subpoena authority to obtain business records in specific cases. Does the FBI have any comparable authority? I'd appreciate any assistance you could provide. Thanks,

[redacted]

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Office of Congressional Affairs

6/22/2005

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Message

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Page 3 of 3



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6/22/2005

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Valerie E. Caproni
SSCI Briefing
USA PATRIOT Act Renewal
April 2005

(This cover sheet is unclassified.)

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**USA PATRIOT Act
Reauthorization Hearing
Valerie E. Caproni
FBI General Counsel
Senate Select Committee on Intelligence**

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CA #05-CV-0845
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**The "Wall", the USA PATRIOT Act and the Evolution of FBI International
Terrorism Investigations Since 9/11**

(U) A major benefit of the USA PATRIOT Act ("the Act"), as it pertains to the so-called "Wall" that existed prior to 9/11 between the law enforcement and intelligence communities, has to do with speed and efficiency. There are specific provisions in the Act that authorized the sharing of intelligence information gathered via criminal investigative techniques with the intelligence community. These include Section 203, which, for example, allowed federal grand jury and wiretap information to be shared with the intelligence community. The sections of the Act having to do with the activities of the intelligence community were geared towards harmonizing the law to fit contemporary technological realities. They were also meant to ease somewhat the thresholds required to obtain certain types of information in intelligence investigations. The broad effect of the Act was thus to foster an environment in which information could flow between the two communities robustly and sensibly. Law enforcement and intelligence personnel are now able to work together at the earliest possible stages in order to combat international terrorism. Nothing can replace the raw investigative effort exerted by criminal and intelligence investigators. But the PATRIOT Act has enabled these investigators to do their jobs more quickly, with fewer barriers and with more ability to integrate information.

(U) ~~(S)~~ Once the PATRIOT Act had been passed in October 2001, information began to flow more readily between law enforcement and the intelligence community. One of the more crucial examples of this movement was the sharing of information between the national security side of the FBI and the DOJ Criminal Divisions and U.S. Attorneys. In March 2002, the Attorney General issued intelligence sharing procedures mandating that FBI counterterrorism officials would be required to provide international terrorism case file information with criminal prosecutors. This sharing initially began as a review of files and later evolved into a close working relationship between the FBI Counterterrorism Division (CTD) and the DOJ Criminal Division's Counterterrorism Section (CTS). CTS, moreover, helps to act as a bridge between the FBI and the United States Attorneys throughout the country.

(U) ~~(S)~~ Later, in July 2002, the Foreign Intelligence Surveillance Court (FISC) added a new component to the spectrum of intelligence sharing. Up to that time, the minimization procedures adopted pursuant to the Foreign Intelligence Surveillance Act (FISA) did not allow for the dissemination -- from FBI to CIA or NSA -- of international terrorism foreign intelligence data that had been collected under FISA authority to be shared in its so-called "raw" form. In other words, the FBI would have to have first minimized the data before sharing it with the CIA or the NSA. The FISC changed this by allowing NSA and CIA to have access to the data. Those agencies thus could greatly speed up the process of bringing their resources to bear in working on the common transnational terrorism threats we now face. Moreover, because the PATRIOT Act had brought the criminal investigators closer to the intelligence community through the FBI, by mid-2002 there began to emerge true integration among several of the agencies engaged in this effort.

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(U)

~~(S)~~ In August 2002, the Attorney General enhanced intelligence sharing with international partners. The AG issued procedures allowing the CIA and NSA to disseminate FISA-derived foreign intelligence relating to United States Persons (USPERs) to foreign governments without having to return to the AG for authorization in each discrete instance. The Attorney General instead required that, while the CIA and NSA could disseminate the information on an ongoing basis, they had to report the disseminations to him in a report on at least an annual basis. Thus, the same protections could be kept while ensuring that vital information moved to our international partners quickly.

(U) In September 2002, the Attorney General issued guidelines regarding the movement of intelligence information from criminal investigations and proceedings into the intelligence community. These guidelines focused on Sections 203 and 905 of the PATRIOT Act. Intelligence acquired during the course of criminal investigations is mandated by Section 905 to be disclosed to the Director of Central Intelligence and Homeland Security officials. Section 203 more specifically authorizes grand jury, electronic, wire and oral interception information to be shared with the intelligence community.

(U) Overall, the PATRIOT Act made a number of specific changes that directly benefited the FBI in its investigations. Section 505 allowed National Security Letters (NSLs) to be issued under a relevance standard. This requires the FBI to demonstrate that the request is relevant to an ongoing national security investigation. Section 206 gave the FBI roving wiretap authority under FISA. The roving provision operates like roving authority under criminal law statutes. Section 207 increased the duration of FISA coverage to permit FBI field offices to monitor FISAs for longer periods. All agents of a foreign power searches increased from 45 to 90 days and for Non-U.S. Person officers or employees of foreign powers the initial FISA period of coverage increased to 120 days. Renewals on such applications were extended to one year of coverage. Section 203 (mentioned above) has allowed intelligence gathered through certain criminal process to be shared with the intelligence community. Section 214 changed the FISA Pen Register/Trap and Trace standard to relevance. This has allowed for robust use of the Pen Register/Trap and Traces in the initial stages of national security investigations and has helped the FBI to build a better picture of connections among suspected international terrorist subjects. Finally, Section 208 modified the FISA statute by increasing the number of judges on the court. This has eased the burden on all involved in the FISA process. Moreover, three FISA judges are now located within fifty miles of Washington, DC. All of the above tools have greatly enabled the FBI to ensure that the law enforcement and intelligence communities have the ability to share information in the effort to confront international terrorism.

(U) In November 2002, the last vestiges of the "Wall" disintegrated when the Foreign Intelligence Surveillance Court of Review issued its very first opinion. In that opinion, the court affirmed the March 2002 Attorney General intelligence information sharing procedures (the FISC had limited them somewhat in May 2002). Further, the Foreign Intelligence Surveillance Court of Review opinion had the effect of declaring the

“Wall” to have been a misinterpretation of the FISA statute and other guidance. The court stated that under the FISA statute as originally written, the government needed to show that only “a purpose” for the collection or search was to gather foreign intelligence rather than the “sole purpose.” The court noted that the PATRIOT Act modified the standard to a “significant purpose.” The overall effect of the opinion was to bolster the push behind the PATRIOT Act to integrate law enforcement and intelligence efforts, within clear guidance, and to banish misperceptions about the “Wall.”

(U) In January 2003, the President announced the creation of the Terrorist Threat Integration Center (TTIC) in his State of the Union Address. TTIC and its successor, the National Counterterrorism Center (NCTC)(created by executive order in August 2004 and affirmed by statute in December 2004), have been responsible for integrating all terrorism analytical threat reporting in a single entity. All intelligence community databases are accessible at NCTC. Intelligence information gleaned from criminal proceedings, such as federal grand juries, is disseminated to NCTC and is integrated into national intelligence reporting. Section 203 of the PATRIOT Act has allowed this to happen.

(U) ~~(S)~~ In October 2003, the Attorney General issued revised Guidelines for National Security Investigations and Foreign Intelligence Collection (NSIG). These guidelines reflect the evolution of changes in national security law, intelligence collection and international terrorism investigations that occurred over the preceding two years. The NSIG reflect the integrated nature of national security investigations and recognize the need to use all available investigative tools, both criminal and intelligence, to combat current transnational threats. The NSIG themselves are a powerful statement on new realities, ones that reflect the need for information integration between criminal investigations and intelligence investigations.

(U) In the year and a half since the creation of the NSIG, the 9/11 Commission has issued its reports and recommendations, and the President signed intelligence reform legislation. The FBI continues to evolve, working towards building a strong Directorate of Intelligence while continuing its law enforcement mission. As the integrated approach to battling International Terrorism evolves, the FBI continues to rely on the provisions of the PATRIOT Act. The Act has enabled the FBI to obtain important information more efficiently than before, allowing its investigators to focus more effectively on their cases. The Act is one of the underpinnings of bringing law enforcement and intelligence services together. If the Congress were to allow the Sunset provisions to lapse, it would be depriving the intelligence and law enforcement communities of valuable and necessary tools. It also would send a signal at odds with the evolution in national security investigations over the last three and half years. The intelligence community has been told repeatedly to “connect the dots” since 9/11. With the help of the law enforcement community, it has made progress. The 9/11 Commission has embraced the value of the PATRIOT Act. The FBI asks that Congress reinforce these views.

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**Post 9/11 Timeline on Measures to Increase
Information Sharing and Create Fully Integrated
International Terrorism Investigations**

1. **September 11, 2001**
 - (U) Terrorist attacks.
2. **October 2001**
 - (U) Passage of the USA PATRIOT Act.
 - Makes technical changes to standards for securing NSLs, Business Records, Voicemail Communications, Computer Trespassing, etc.
 - Abolished the "Wall" for the sharing of Title III and Federal Grand Jury Rule 6(e) material with the U.S. Intelligence Community.
3. **March 2002**
 - (U) Attorney General issues Intelligence Sharing Procedures for Foreign Intelligence and Counterintelligence Investigations. Procedures mandate that Federal Prosecutors will review FBI International Terrorism case files for relevant material on which to build criminal prosecutions.
4. **May 2002**
 - (U) FISC accepts in part and modifies in part the AG March 2002 procedures. Creates a "chaperone" requirement instituting OIPR involvement in information sharing between intelligence investigators and criminal prosecutors.
5. **July 2002**
 - (U) ◦ ~~(S//NF)~~ FISC approves the "Raw Data" Motion and signs order. This order permits the FBI to share raw FISA data with the CIA and NSA in International Terrorism FISA surveillances and searches.
6. **August 2002**
 - (U) ◦ ~~(S//NF)~~ Attorney General signs standing authorization for CIA and NSA to disseminate USPER FISA-derived foreign intelligence to foreign governments. This authorization allows the CIA and NSA to disseminate the material without having to seek AG approval in each discrete instance.

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7. September 2002

- (U) Attorney General issues "Guidelines Regarding the Disclosure to the Director of Central Intelligence and Homeland Security Officials of Foreign Intelligence Acquired in the Course of a Criminal Investigation." Explains implementation of PATRIOT Act Section 905(a).
- (U) Attorney General issues "Guidelines Regarding Prompt Handling of Reports of Criminal Activity Involving Foreign Intelligence Sources." Explains implementation of PATRIOT Act Section 905(b).
- (U) Attorney General issues "Guidelines for Disclosure of Grand Jury and Electronic, Wire and Oral Interception Information Identifying United States Persons." Explains implementation of PATRIOT Act Section 203.

8. November 2002

- (U) FISA Court of Review issues opinion rejecting the OIPR "chaperone" requirement and accepts AG March 2002 Information Sharing in full. FISA Court of Review also states that FISC and DOJ have incorrectly interpreted the FISA statute for years. FISA Court of Review opinion has effect of declaring the "Wall" to have been a misinterpretation of the statute and other guidance. The FISA Court of Review states that under the FISA statute as originally written the government needed to show that "a purpose" for the collection was to gather Foreign Intelligence rather than the "sole purpose." The FISA Court of Review notes that the PATRIOT Act modified the standard to a "significant purpose."

9. December 2002

- (U) The Deputy Attorney General (DAG) issues field guidance to all DOJ prosecutors and all FBI agents on Intelligence Sharing in FI and FCI Investigations. The DAG also explains the effect of the FISA Court of Review opinion.

10. January 2003

- (U) The Creation of the Terrorist Threat Integration Center ("TTIC") (now the National Counterterrorism Center) announced by the President.

11. March 2003

- (U) Department of Homeland Security is created.

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12. October 2003

- (U) Attorney General issues revised Guidelines for National Security Investigations and Foreign Intelligence Collection. ("NSIG")

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Cases Using FISA (Public Information)
Prepared by the Department of Justice Counterterrorism Section

United States v. Al-Arian, et al.

- **Defendants:** Sami Amin Al-Arian, Ramadan Abdullah Shallah, Bashir Musa Mohammed Nafi, Sameeh Hammoudeh, Mohammed Tasir Hassan Al-Khatib, Abd Al Aziz Awda, Ghassan Zayed Ballut, Hatim Naji Fariz, Mazen Al-Najjar
- **District:** Middle District of Florida, Judge James Moody
- **Date of Superseding Indictment:** September 21, 2004
- **Status:** Trial scheduled to begin May 16, 2005.

United States v. Arnaout

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- **Defendant:** Enaam M. Arnaout
- **District:** Northern District of Illinois, Judge Suzanne B. Conlon
- **Date of Indictment:** October 9, 2002
- **Status:** Arnaout ultimately pleaded guilty to a racketeering charge, admitting that he diverted thousands of dollars from BIF to support Islamic militant groups in Bosnia and Chechnya. He was sentenced to over 11 years in prison.

United States v. Hassoun, Youssef

- **Defendants:** Adham Hassoun and Mohamed Youssef
- **District:** Southern District of Florida, Judge Marcia Cooke
- **Date of Third Superseding Indictment:** October 7, 2004
- **Status:** Awaiting trial.

United States v. Holy Land Foundation for Relief & Development, et al.

- **Defendants:** Shukri Abu Baker, Mohammed El-Mezain, Ghassan Elashi, Haitham Maghawri, Akrim Mishal, Mufid Abdulqader, and Abdulrahman Odeh
- **District:** Northern District of Texas, Judge Joseph A. Fish
- **Date of Indictment:** July 26, 2004

- **Status:** The defendants have been indicted, still waiting for a trial date to be set.

United States v. Damrah

- **Defendants:** Fawaz Mohammed Damrah
- **District:** Northern District of Ohio, Judge James Gwin
- **Date of Indictment:** December 16, 2003
- **Status:** On June 17, 2004, the jury convicted Fawaz Damrah of violating 18 U.S.C. § 1425 by unlawfully obtaining U.S. citizenship by concealing material facts. On September 20, 2004, the defendant was committed to the Bureau of Prisons for two months, followed by four months in home confinement with electronic monitoring, and three years of supervised release. On September 23, the district court ordered the defendant's citizenship revoked pursuant to 8 U.S.C. § 1451(e).

United States v. Battle, et al. (Portland Cell)

- **Defendants:** Jeffrey Leon Battle, October Martinique Lewis, Patrice Lumumba Ford, Muhammad Ibrahim Bilal, Ahmed Ibrahim Bilal, Habis Abdulla al-Saoub, Maher Mofeid Hawash
- **District:** District of Oregon, Judge Robert E. Jones
- **Date of Superceding Indictment:** May 2, 2003
- **Status:** Six of the seven were convicted and received prison sentences ranging from three to eighteen years. Charges against the seventh defendant (al-Saoub) were dismissed after he was killed in Pakistan by Pakistani troops on October 3, 2003.

United States v. Dumeisi

- **Defendant:** Khaled Abdel Latif Dumeisi
- **District:** Northern District of Illinois
- **Date of Superceding Indictment:** October 29, 2003 (PACER)
- **Status:** Sections 218 and 504 were critical in the successful prosecution of Khaled Abdel Latif Dumeisi, who was convicted by a jury in January 2004 of illegally acting as an agent of the former government of Iraq, as well as two counts of perjury. Before the Gulf War, Dumeisi passed information on Iraqi opposition members located in the United States to officers of the Iraqi Intelligence Service stationed in the Iraqi Mission to the United

Nations. During this investigation, intelligence officers conducting surveillance of Dumeisi pursuant to FISA coordinated and shared information with law enforcement agents and prosecutors investigating Dumeisi for possible violations of criminal law. Because of this coordination, law enforcement agents and prosecutors learned from intelligence officers of an incriminating telephone conversation that took place in April 2003 between Dumeisi and a co-conspirator. This phone conversation corroborated other evidence that Dumeisi was acting as an agent of the Iraqi government and provided a compelling piece of evidence at Dumeisi's trial. (Excerpt from *The Report from the Field* (July 2004))

Cases Using FISA (Public Information)
Prepared by the Department of Justice Counterterrorism Section

United States v. Al-Arian, et al.

- **Defendants:** Sami Amin Al-Arian, Ramadan Abdullah Shallah, Bashir Musa Mohammed Nafi, Sameeh Hammoudeh, Mohammed Tasir Hassan Al-Khatib, Abd Al Aziz Awda, Ghassan Zayed Ballut, Hatim Naji Fariz, Mazen Al-Najjar
- **District:** Middle District of Florida, Judge James Moody
- **Status:** Trial scheduled to begin May 16, 2005.

United States v. Arnaout

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- **Defendant:** Enaam M. Arnaout
- **District:** Northern District of Illinois, Judge Suzanne B. Conlon
- **Status:** Arnaout ultimately pleaded guilty to a racketeering charge, admitting that he diverted thousands of dollars from BIF to support Islamic militant groups in Bosnia and Chechnya. He was sentenced to over 11 years in prison.

United States v. Hassoun, Youssef

- **Defendants:** Adham Hassoun and Mohamed Youssef
- **District:** Southern District of Florida; Judge Marcia Cooke
- **Status:** Awaiting trial.

United States v. Holy Land Foundation for Relief & Development, et al.

- **Defendants:** Shukri Abu Baker, Mohammed El-Mezain, Ghassan Elashi, Haitham Maghawri, Akrim Mishal, Mufid Abdulqader, and Abdulrahman Odeh
- **District:** Northern District of Texas, Judge Joseph A. Fish
- **Status:** The defendants have been indicted, still waiting for a trial date to be set.

United States v. Damrah

- **Defendants:** Fawaz Mohammed Damrah
- **District:** Northern District of Ohio, Judge James Gwin

- **Status:** On June 17, 2004, the jury convicted Fawaz Damrah of violating 18 U.S.C. § 1425 by unlawfully obtaining U.S. citizenship by concealing material facts. On September 20, 2004, the defendant was committed to the Bureau of Prisons for two months, followed by four months in home confinement with electronic monitoring, and three years of supervised release. On September 23, the district court ordered the defendant's citizenship revoked pursuant to 8 U.S.C. § 1451(e).

United States v. Battle, et al. (Portland Cell)

- **Defendants:** Jeffrey Leon Battle, October Martinique Lewis, Patrice Lumumba Ford, Muhammad Ibrahim Bilal, Ahmed Ibrahim Bilal, Habis Abdulla al-Saoub, Maher Mofeid Hawash
- **District:** District of Oregon, Judge Robert E. Jones
- **Status:** Six of the seven were convicted and received prison sentences ranging from three to eighteen years. Charges against the seventh defendant (al-Saoub) were dismissed after he was killed in Pakistan by Pakistani troops on October 3, 2003.

United States v. Dumeisi

- **Defendant:** Khaled Abdel Latif Dumeisi
- **District:** Northern District of Illinois
- **Status:** Sections 218 and 504 were critical in the successful prosecution of Khaled Abdel Latif Dumeisi, who was convicted by a jury in January 2004 of illegally acting as an agent of the former government of Iraq, as well as two counts of perjury. Before the Gulf War, Dumeisi passed information on Iraqi opposition members located in the United States to officers of the Iraqi Intelligence Service stationed in the Iraqi Mission to the United Nations. During this investigation, intelligence officers conducting surveillance of Dumeisi pursuant to FISA coordinated and shared information with law enforcement agents and prosecutors investigating Dumeisi for possible violations of criminal law. Because of this coordination, law enforcement agents and prosecutors learned from intelligence officers of an incriminating telephone conversation that took place in April 2003 between Dumeisi and a co-conspirator. This phone conversation corroborated other evidence that Dumeisi was acting as an agent of the Iraqi government and provided a compelling piece of evidence at Dumeisi's trial. (Excerpt from *The Report from the Field* (July 2004))

United States v. Hassoun and Youssef: On September 16, 2004, ADHAM HASSOUN and MOHAMMED YOUSSEF, were indicted by a Grand Jury in the Southern District of Florida in a **10-count superseding** indictment. The charges include: Providing material support to terrorists in violation of 18 USC § 2339A and also conspiracy to do the same for providing "material support and resources... knowing and intending that they be used in preparation for and carrying out a violation of Title 18 USC § 956 (a)(1), that is, a conspiracy to murder, kidnap and maim persons in a foreign country." The indictment also includes eight additional counts against HASSOUN on charges of unlawful possession of a firearm, making false statements, perjury and obstruction of immigration court proceedings. HASSOUN is currently in custody on these charges. YOUSSEF is in custody in Egypt serving a sentence for other terrorist activities. On **October 7, 2004**, the Grand Jury returned a superseding indictment against HASSOUN and YOUSSEF which charges them with, in addition to the earlier charges, one count each of conspiracy to murder, maim and kidnap persons in a foreign country in violation of 18 USC Section 956.

United States v. Arnaout: Enaam Arnaout, aka Abu Mahmoud Al Suri, aka Abu Mahmoud Al Hamawi, aka Abdel Samia, the **principle officer of the Benevolence International Foundation (BIF)**, was indicted by a Federal grand jury seated in the Northern District of Illinois. Arnaout was charged in an **eight (8) count indictment** with violating Federal criminal statutes to include **RICO (racketeering)**, conspiracy to provide material support to terrorism, mail fraud, wire fraud, and money laundering. On February 10, 2003, entered into a plea agreement with the government, pleading guilty to a RICO count. In August 2003, Arnaout was sentenced to serve an eleven (11) year prison sentence related to the above RICO charges.

United States v. Dumeisi: January 12, 2004, KHALED ABDEL-LATIF DUMEISI was convicted in U.S. District Court, Northern District of Illinois in docket # 03-664, of acting as an unregistered agent of the former Government of Iraq (GOI). This conviction was the culmination of a long running FBI investigation into his activities on behalf of the GOI. The jury also found DUMEISI guilty of conspiracy and perjury. On March 31, 2004, he was sentenced to 46 months in prison, after which he will be deported.

United States v. Battle: On 03 October 2002, a federal grand jury in Portland, Oregon, indicted Jeffrey Leon Battle and five others for: Conspiracy to Levy War Against the United States (18 U.S.C. § 2384); Conspiracy to Provide Material Support & Resources to Foreign Terrorist Organizations (18 U.S.C. § 2339B); Conspiracy to Contribute Services to al Qaeda and Taliban (50 U.S.C. § 1705(b)). In addition, Battle and 3 others were indicted for Possessing Firearms in Furtherance of Crimes of Violence (18 U.S.C. § 924(c)(1)(A)(iii)). Battle pled guilty to the first count of the indictment and was sentenced to 18 years incarceration on 24 November 2003. Other defendants received sentences from 3 - 18 years incarceration. Charges against one defendant were dismissed.

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United States v. Damrah

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On **December 16, 2003**, an indictment was handed down in the Northern District of Ohio against Damrah for violation of Title 18 USC §1425(a)(b), Immigration fraud charges. He was charged and found guilty of making false statements in connection with his citizenship application. He was convicted last year of lying to immigration authorities. He did not disclose during naturalization proceedings in 1993 that he helped raise money for PIJ. Damrah was sentenced to Jail for two months around the 21st of November (released end of January, 2005). After two months in prison, he spent another four months under house arrest. The Judge in the case was assured by the Prosecutor's office that no deportation proceedings were to be initiated until after DAMRAH had exhausted **all** appeals on the conviction. Damrah is currently facing deportation proceedings after being stripped of his US citizenship.

United States v. Holy Land Foundation for Relief & Development, et al.

On Monday, **07/26/2004**, sealed indictments and arrest warrants were obtained on charges of Conspiracy, Material Support to Terrorism, Money Laundering, and Tax fraud, in the Northern District of Texas.

The Holy Land Foundation for Relief and Development (HLFRD) is registered as a non-profit humanitarian organization that has conducted fund-raising activities in the United States and has claimed to provide aid to thousands of poor Palestinians in Gaza and the West Bank, as well as other geographical areas. On 12/04/2001, the Department of Treasury's Office of Foreign Assets Control (OFAC) designated the HLFRD as a Specially Designated Terrorist (SDT), and blocked all known assets of the HLFRD based on information that the HLF provided material support to the Foreign Terrorist Organization (FTO)/SDT HAMAS. On 12/10/2001, Dallas opened a criminal investigation into the HLFRD for providing material support to terrorism. Investigation has revealed that the targeted subjects provided material support to Hamas, and that they have committed various other violations of US law.

United States v. Al Arian, et al.

Superseding Indictment on September 21, 2004

Tampa FBI has been involved in a long-term criminal investigation of the North American cell of the PIJ terrorist organization. The cell is headed by Sami Al-Arian, a college professor, who operated numerous front organizations, namely the Islamic Committee for Palestine (ICP) and the World and Islam Studies Enterprises (WISE). These organizations not only raised funds to send back to the Middle East, but also employed Ramadan Shallah in Tampa, Florida, immediately before Shallah took over the leadership of the PIJ in 1996 following the assassination of Fathi Shikaki.

The case is being prosecuted under a RICO theory. The indictment of Al-Arian and seven others took place on **February 19, 2003**. Sami Al-Arian, Sameeh Hammoudeh, Hatim Naji Fariz, and Ghassan Ballout were arrested on **February 20, 2003**. A superceding indictment was filed on the case on **September 21, 2004**, which added additional charges and overt acts, streamlined the prosecutive theory, and added subject Mazen Al-Najjar, who was previously named as an unindicted co-conspirator. The theory of the case is that PIJ is a criminal enterprise which uses various officers to conduct its illegal business through a pattern of racketeering activity in violation of 18 USC §§1962. The subjects of the investigation, acting through PIJ, have facilitated the murder of U.S. and Israeli citizens, have committed bombings and other criminal acts, and have then released public statements claiming responsibility for those criminal acts as a means to extort political concessions from the State of Israel in violation of 18 USC §§1961. The subjects have also financially supported PIJ and its campaign of terror by raising funds in the U.S. and Europe. Those funds were then forwarded from the Tampa, Florida area, to the Middle East to assist PIJ in carrying out specified unlawful activities (murder, extortion, destruction of property by explosion, etc.) in violation of the Money Laundering statute, 18 USC §§1956. The subjects have also provided material support for terrorist activities in violation of 18 USC §§2339A and have aided and abetted the murder of U.S. citizens, namely Alissa Flatow and others, in violation of 18 USC §§2332.

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DATE: 08-18-2005
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REASON: 1.4 ((C))
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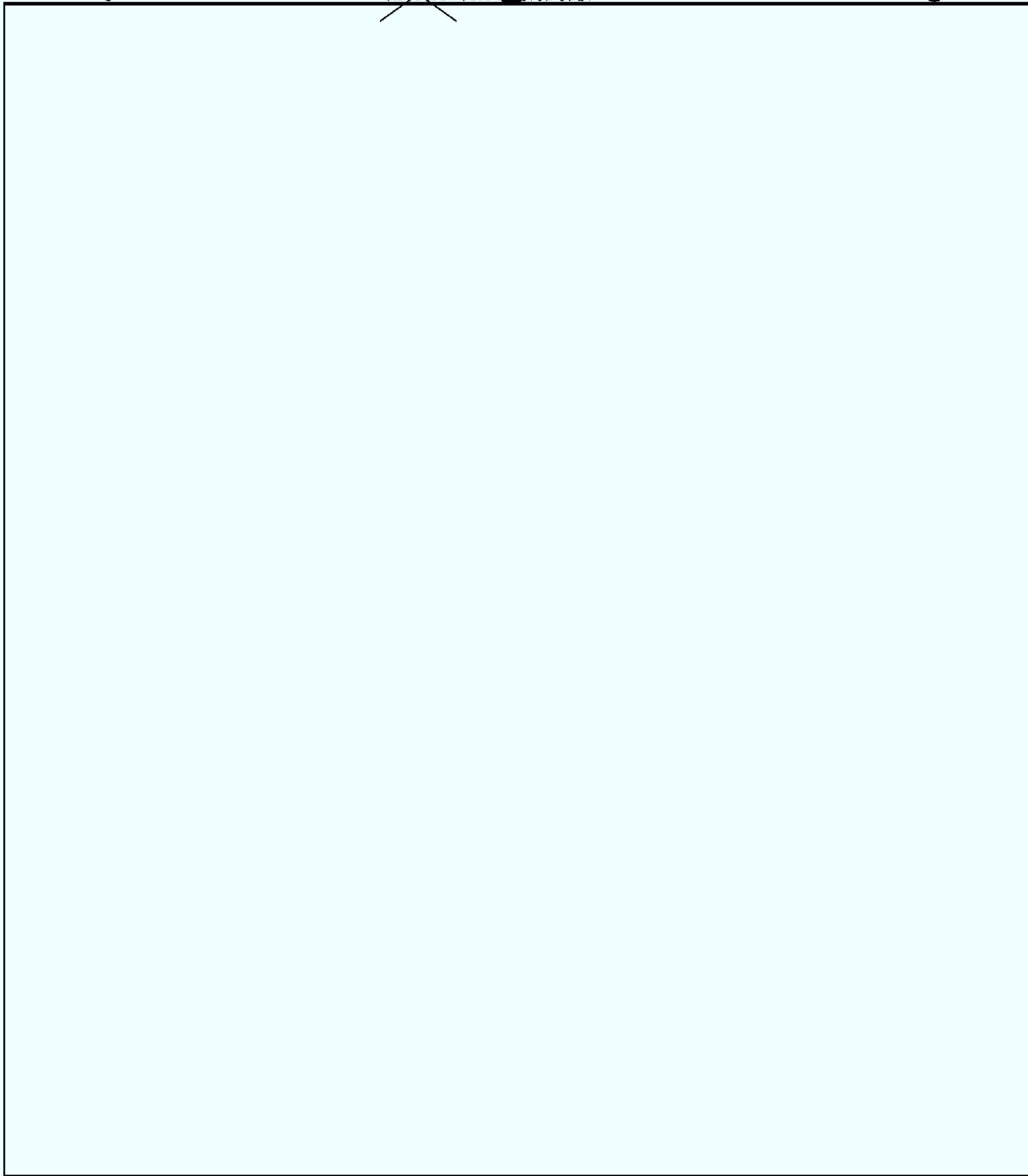
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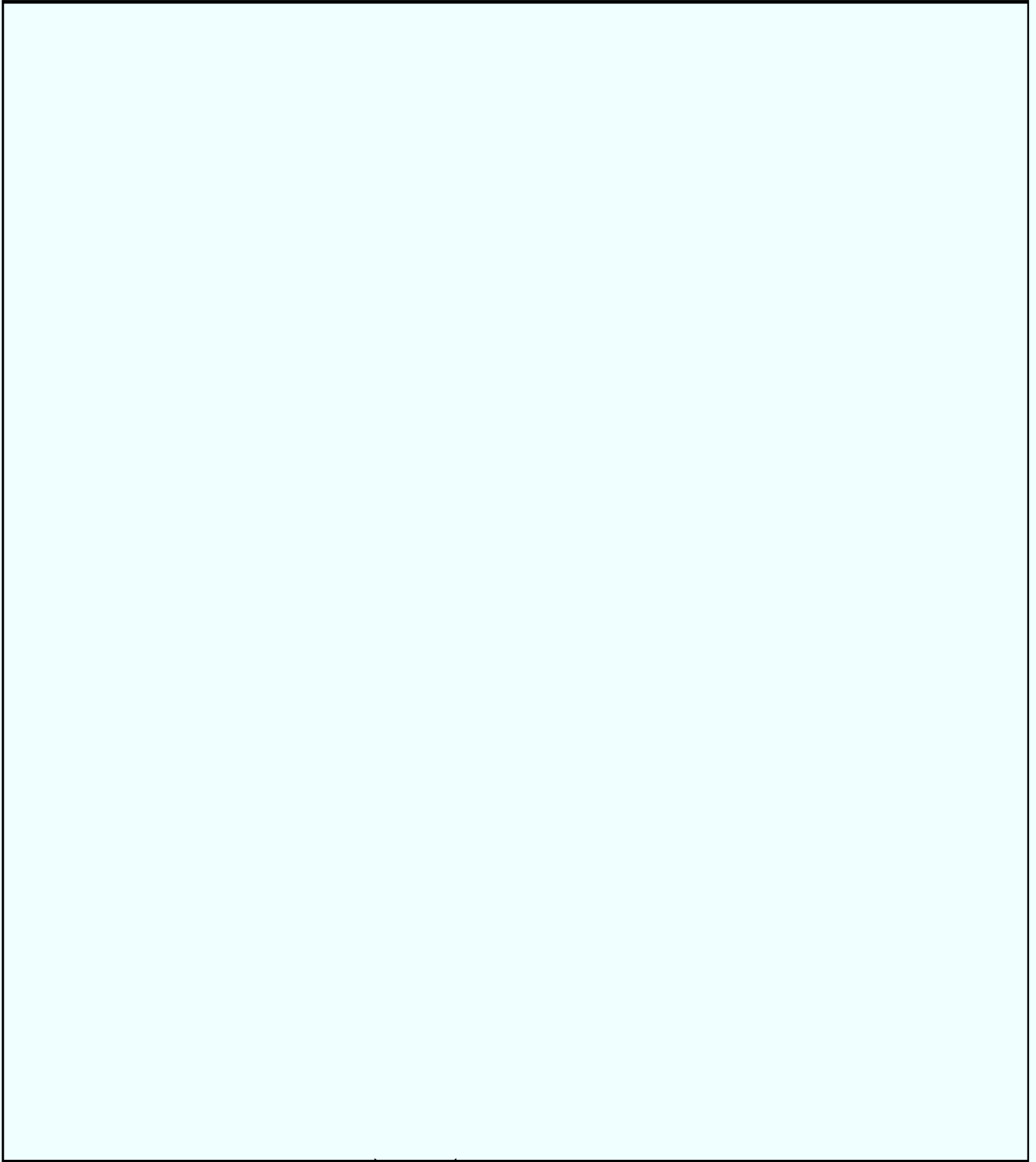
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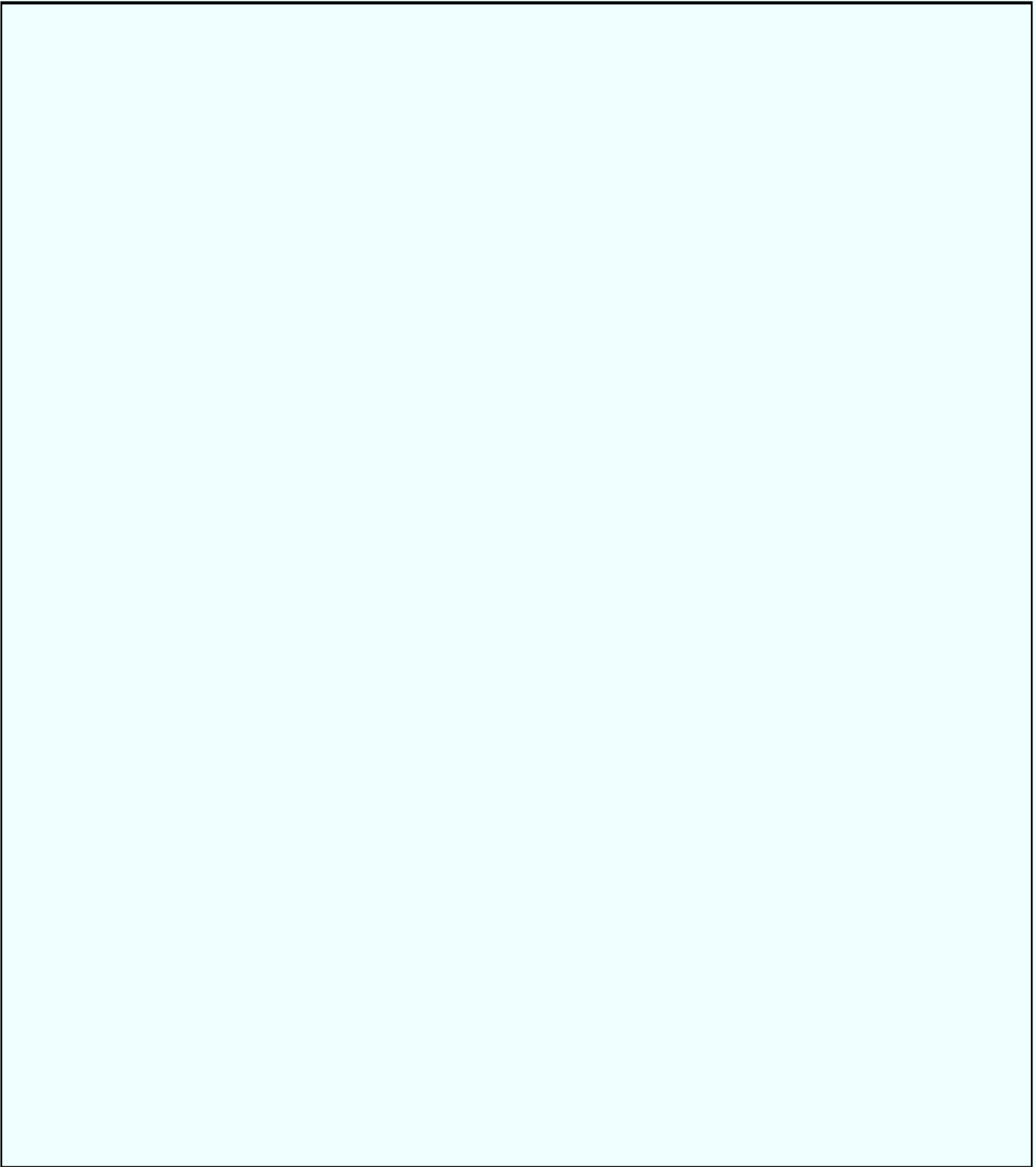
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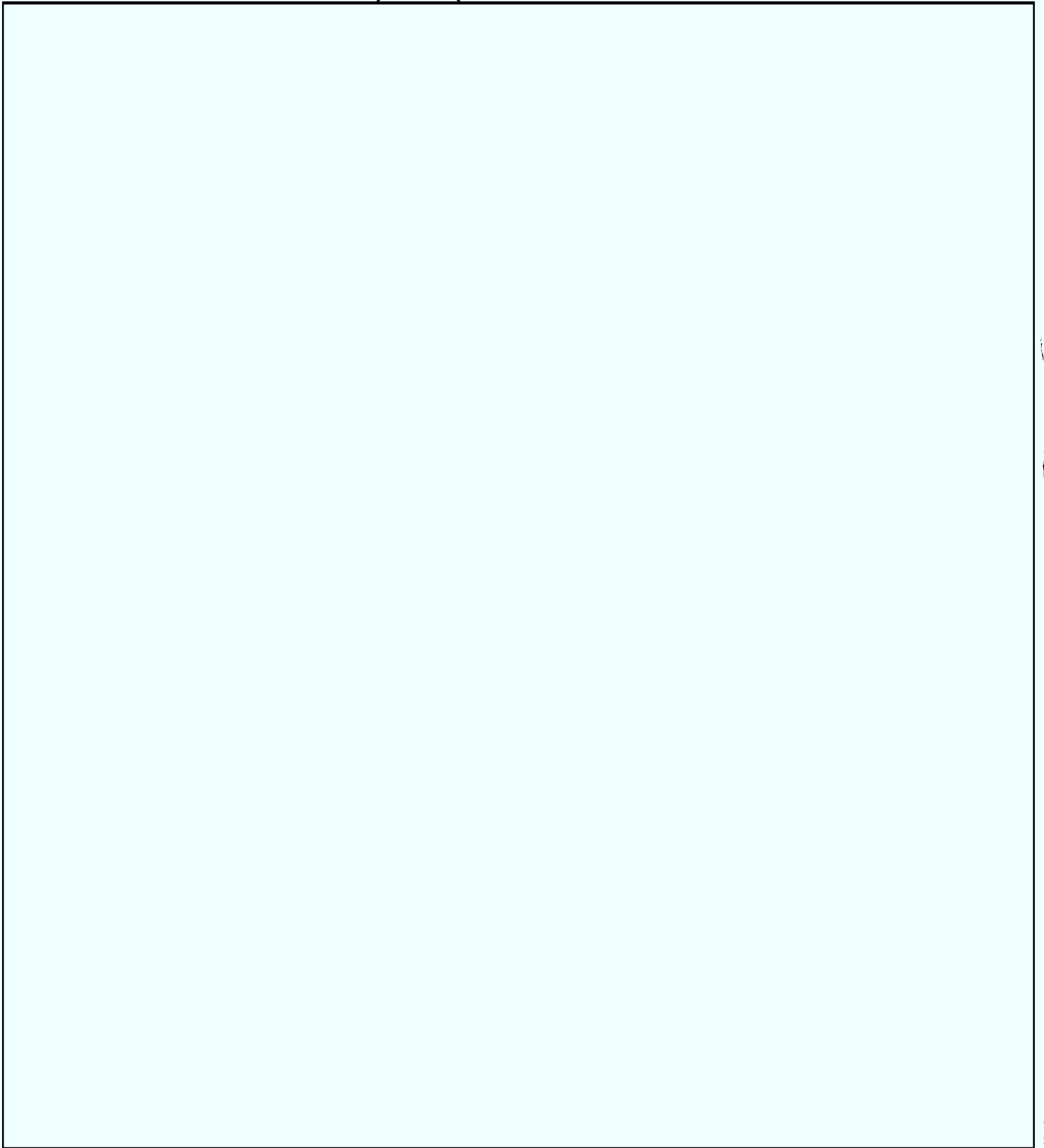
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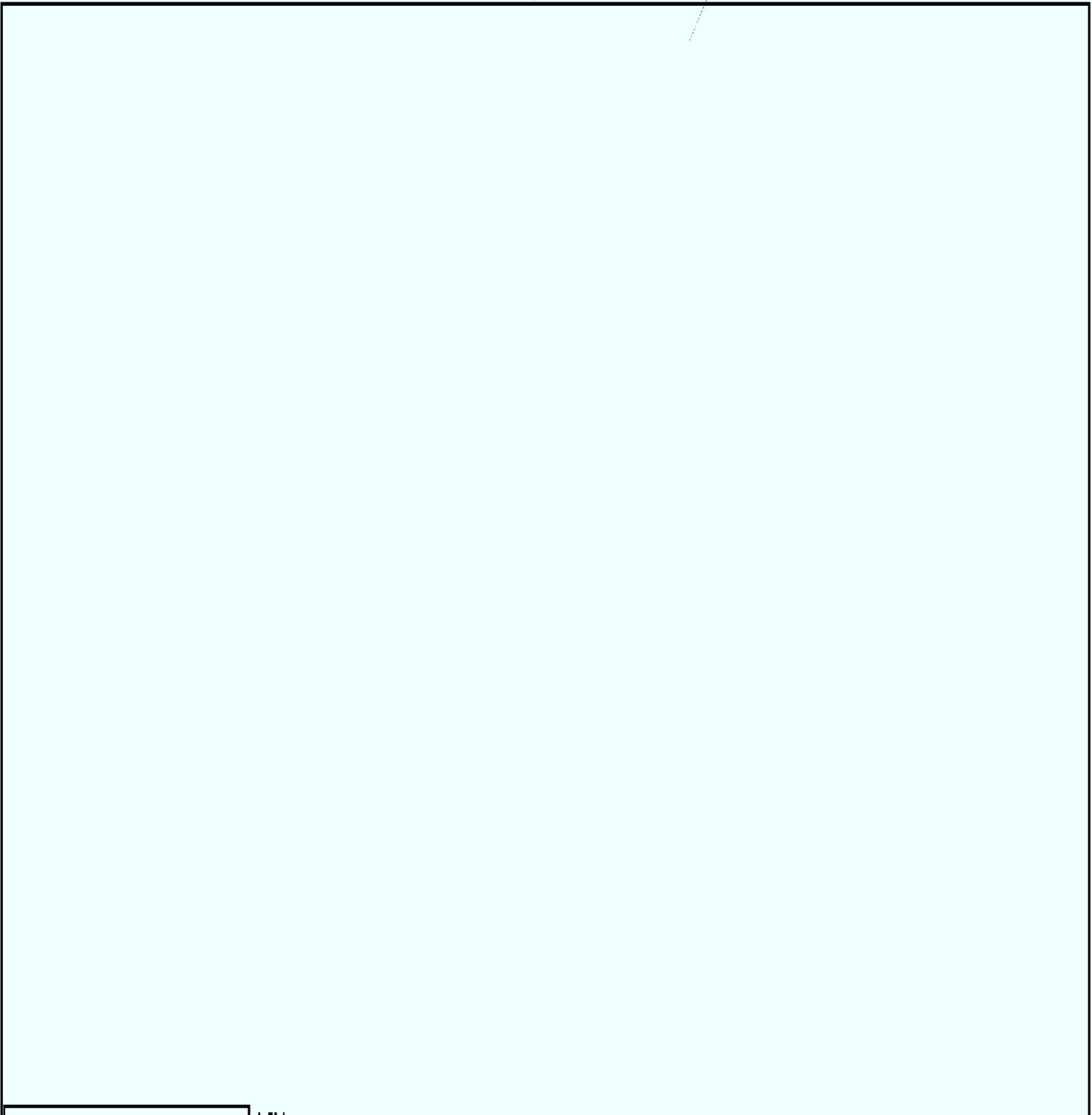
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Docket No. & Date Approved:

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Facts For Renewals:

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DATE: 08-18-2005
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CA #05-CV-0845

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Name/Foreign Power:

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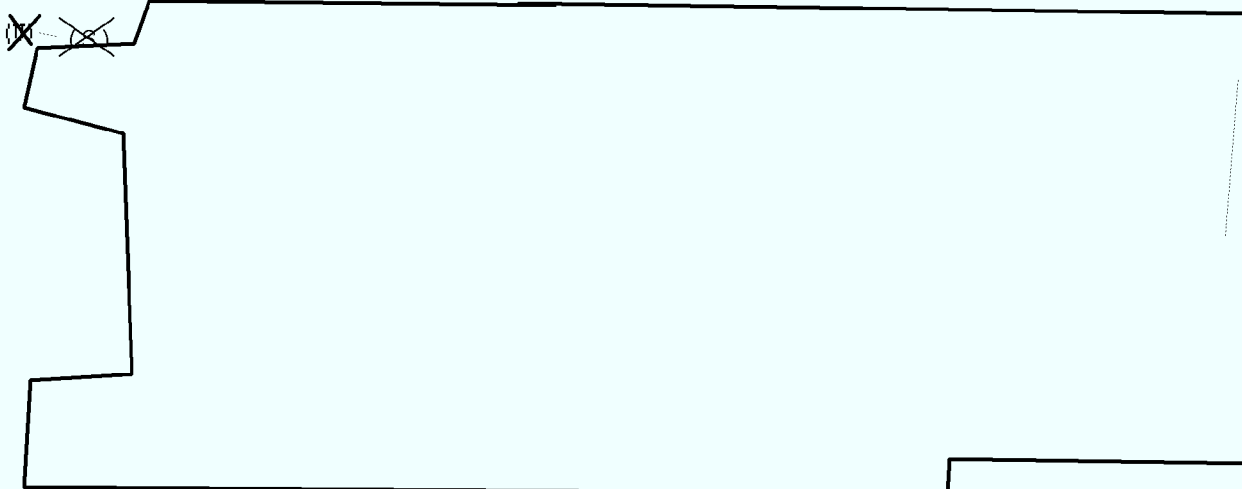
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Facts For Renewals:

No Renewals.

Benefit (or lack thereof) of Roving Authority:

None cited in application; No information received from the field.

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and Date Approved:

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REASON: 1.4 (B,C,D)
DECLASSIFY ON: 08-18-2030
CA #05-CV-0845

[REDACTED] (OGC) (FBI)

From: [REDACTED] (OGC) (FBI)
Sent: Thursday, April 14, 2005 2:26 PM
To: [REDACTED] (OGC) (FBI)
Subject: FW: Roving Authority Example

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RECORD xxx-CV-xxxxxxx

-----Original Message-----

From: [REDACTED] (OGC) (FBI)
Sent: Thursday, April 14, 2005 10:10 AM
To: [REDACTED] (OGC) (FBI)
Subject: FW: Roving Authority Example

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This pertains to to the project we talked about this morning.

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-----Original Message-----

From: Caproni, Valerie E. (OGC) (FBI)
Sent: Tuesday, April 12, 2005 3:52 PM
To: [REDACTED] (CV) (FBI)
Cc: [REDACTED] (CTD) (FBI); [REDACTED] (CV) (FBI); [REDACTED] (OGC) (FBI); [REDACTED]
M (OGC) (FBI)
Subject: RE: Roving Authority Example

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RECORD xxx-CV-xxxxxxx

Thanks. Were there any tech cuts that you would view as "smoking guns"? or how about just tech cuts that would make a senator say, "ok that is good."

-----Original Message-----

From: [REDACTED] (CV) (FBI)
Sent: Thursday, April 07, 2005 6:44 PM
To: Caproni, Valerie E. (OGC) (FBI)
Cc: [REDACTED] (CTD) (FBI); [REDACTED] (CV) (FBI); [REDACTED] (OGC) (FBI); [REDACTED]
ERIC M (OGC) (FBI)
Subject: RE: Roving Authority Example

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RECORD xxx-CV-xxxxxxx

[REDACTED]

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Message

Page 2 of 4

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4/15/2005

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Counterintelligence Law Unit
NSLB, OGC JEH Room 7975



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~~DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign CounterIntelligence Investigations
DECLASSIFICATION EXEMPTION 1
SECRET~~

~~DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign CounterIntelligence Investigations
DECLASSIFICATION EXEMPTION 1
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~~DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign CounterIntelligence Investigations
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DECLASSIFICATION EXEMPTION 1
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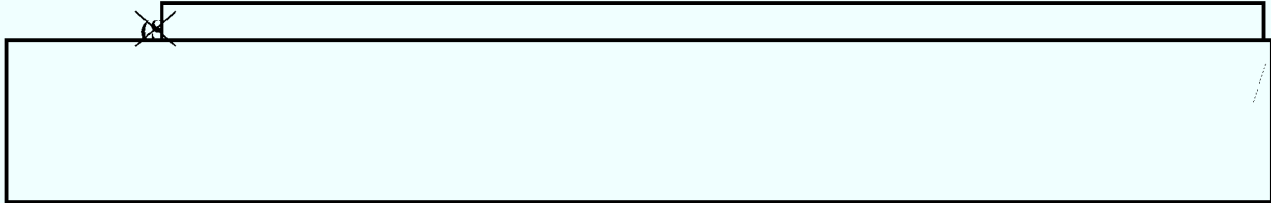
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CA #05-CV-0845
DATE: 08-18-2005
CLASSIFIED BY 65179/DMH/KBR
REASON: 1.4 (C,D)
DECLASSIFY ON: 08-18-2030

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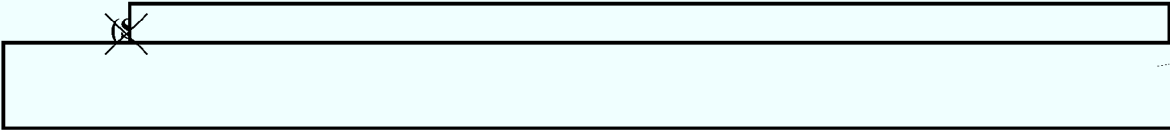
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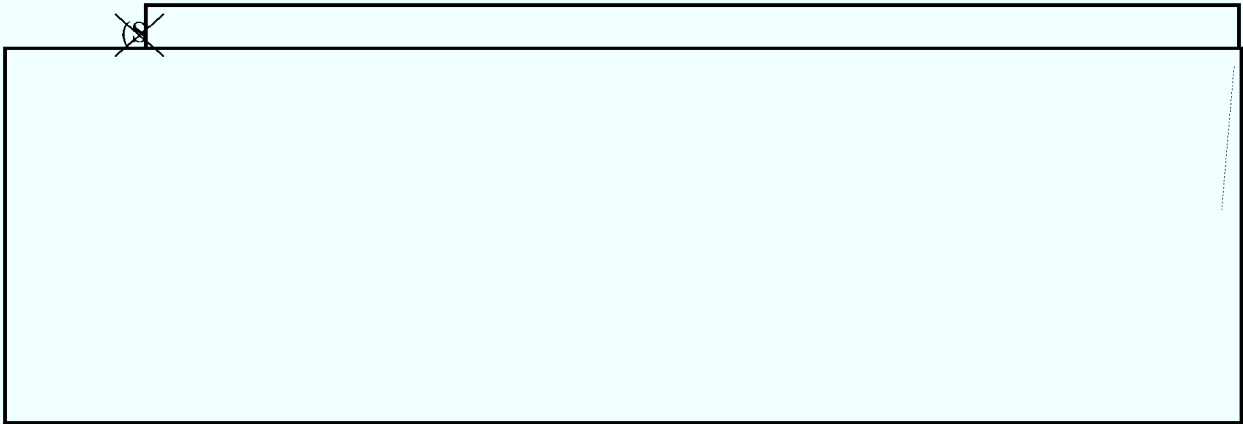
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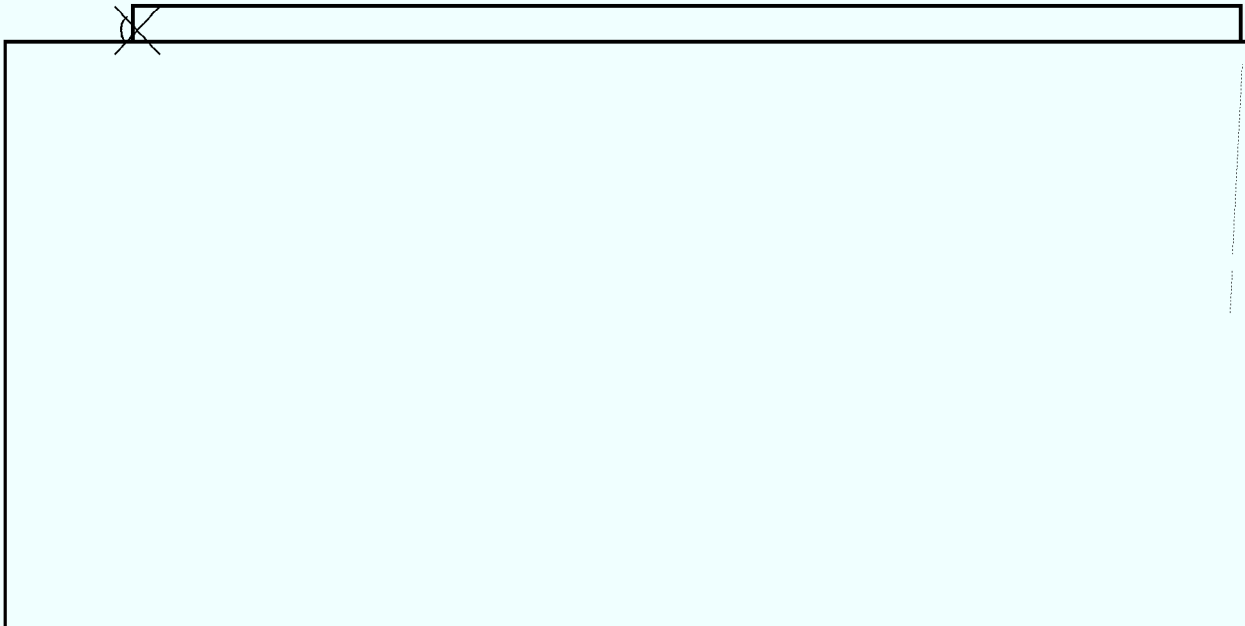
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WHERE SHOWN OTHERWISE

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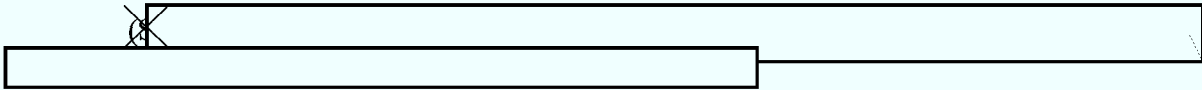
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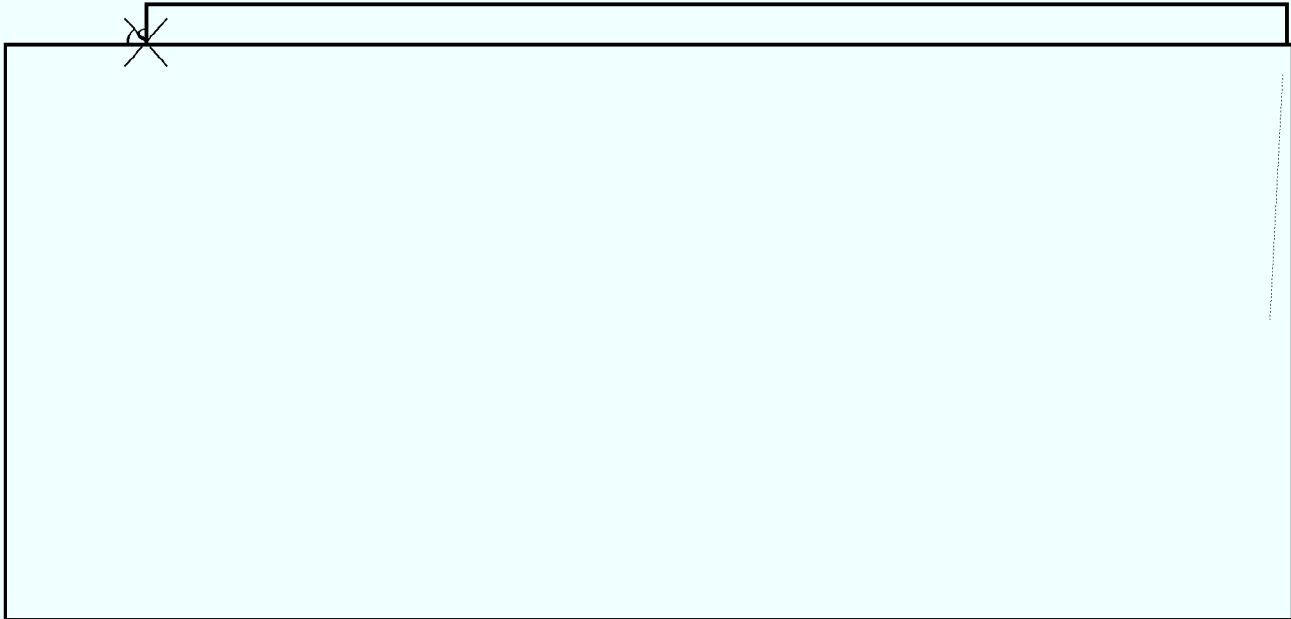
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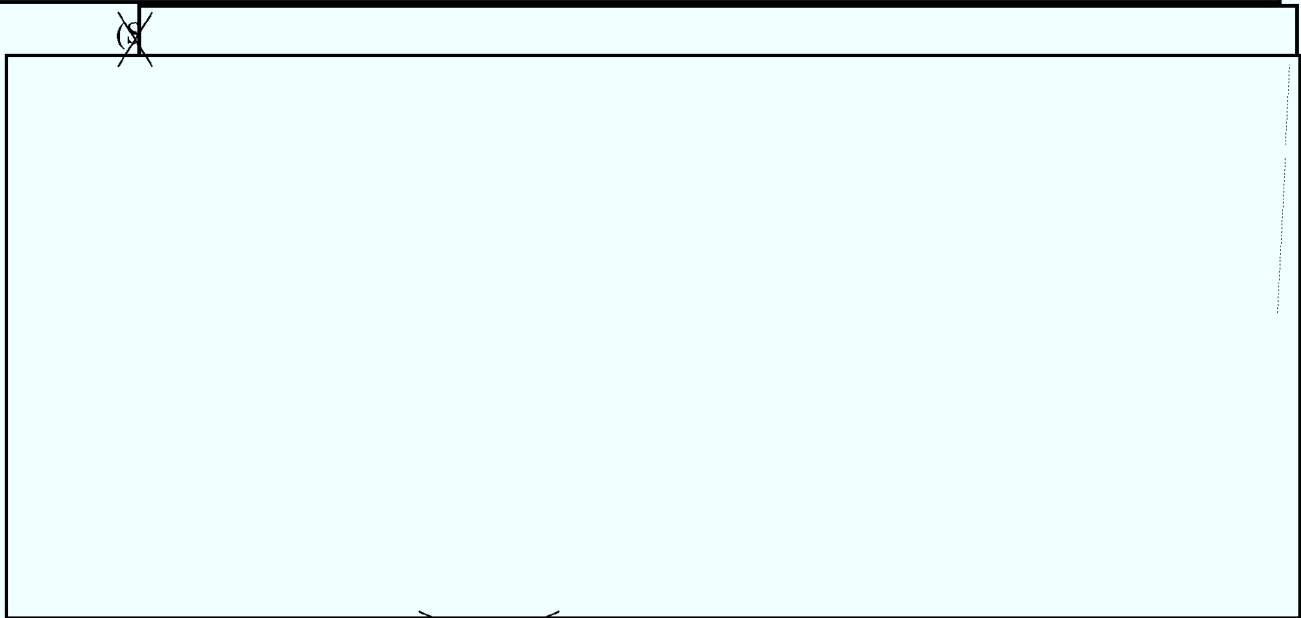
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[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

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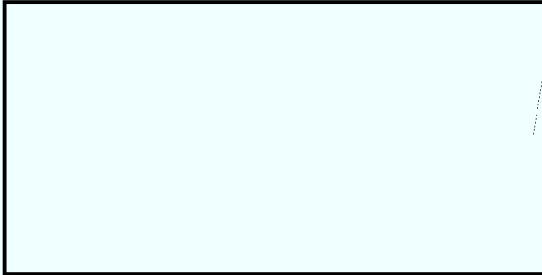
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#CA 05-CV-0845

DATE: 08-18-2005
CLASSIFIED BY 65179/DMH/KBR
REASON: 1.4 (C)
DECLASSIFY ON: 08-18-2030

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WHERE SHOWN OTHERWISE

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05-CV-0845

[REDACTED] (RMD) (FBI)

From: [REDACTED] (OGC) (FBI)
Sent: Wednesday, June 22, 2005 4:22 PM
To: [REDACTED] (RMD) (FBI)
Cc: [REDACTED] (OGC) (FBI)
Subject: EPIC FOIA REQUEST

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SENSITIVE BUT UNCLASSIFIED
NON-RECORD

I do not believe this was the final version. This is a draft of responses for the Director. I am not sure what the final product looked like.

[REDACTED]
Assistant General Counsel
National Security Law Branch
Room 5S-214

b6 , b7C

[REDACTED]
Ext. [REDACTED] (internal use only)
-----Original Message-----

b2

From: [REDACTED] (OGC) (FBI)
Sent: Friday, July 23, 2004 4:48 PM
To: LAMMERT, ELAINE N. (OGC) (FBI)
Subject: FW: OGC RESPONSES

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SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Elaine Lammert:

FYI:

I just spoke with [REDACTED]. He informed me that [REDACTED] will only be with them for one more week, and he will start working on the responses Monday morning. He stated that he was not familiar with the Patriot Act and need more information on the different sections. He can be reached at ext. [REDACTED].

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[REDACTED]
Assistant General Counsel
National Security Law Branch
Ext. [REDACTED]

b2

-----Original Message-----

From: [REDACTED] (OGC) (FBI)
Sent: Friday, July 23, 2004 4:23 PM
To: LAMMERT, ELAINE N. (OGC) (FBI)
Subject: OGC RESPONSES

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SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Elaine Lammert:

I have attached two versions. One version included (S) as well as (U) examples for the response to question 84f.

6/23/2005

The other one only includes (u) unclassified examples.

I did not incorporate [redacted] responses to the other three questions, so they still state that CTD would be able to supply a more detailed response.

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[redacted]
Assistant General Counsel
National Security Law Branch
Ext. [redacted]

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SENSITIVE BUT UNCLASSIFIED

SENSITIVE BUT UNCLASSIFIED

SENSITIVE BUT UNCLASSIFIED

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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

~~Secret~~

DATE: 08-12-2005
CLASSIFIED BY 65179 DMH/KJ
REASON: 1.4 (c)
DECLASSIFY ON: 08-12-2030
05-CV-0845

QUESTIONS FOR THE RECORD FROM DIRECTOR'S 5/20/04 SENATE HEARING
NSLB RESPONSES

28. OGC. During the hearing, Senator Grassley asked you about the retroactive classification of information provided by the FBI to Committee staff related to a whistleblower who previously worked for the FBI translation program. I share Senator Grassley's concern that this order is unrealistic. A great deal of information regarding the whistleblower's claims, including the FBI's corroboration of many of the problems she raised, has been in the public record for more than two years. I appreciated your statement that the retroactive classification order was not intended to place a gag on Congress. However, the notice received by staff members of the Judiciary Committee was very vague, referring only to "some" information conveyed in the briefings. If state secrets are truly implicated by something that was said in an unclassified briefing two years ago, the FBI should provide very specific instructions to current and former staff on what information must be kept secret. Will you instruct your staff to provide more specific information to relevant staff about what, exactly, from the 2002 briefings is classified and what is not?

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33. OGC. You testified that, prior to the PATRIOT Act, "if a court-ordered criminal wiretap turned up intelligence information, FBI agents working on the criminal case could not share that information with agents working on the intelligence case." Please state specifically what law or laws prevented such information-sharing prior to PATRIOT, and whether a court could authorize such information-sharing, regardless of any such law or laws?

Response: Prior to the changes brought about by the Patriot Act, Title 18 Section 2517 was interpreted to solely authorize the sharing of intercepted wire, oral, or electronic

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communications for criminal law enforcement purposes without the need to obtain a court order. Sharing intercepted information for foreign intelligence purpose required a court order and, based upon the statutory language, it was unclear whether a judge would sign an order. The changes to the Patriot Act clearly allow the sharing of foreign intelligence information developed during a court-ordered criminal wiretap with the agents working intelligence cases.

34. OGC. You further testified that, prior to the PATRIOT Act, "information could not be shared from an intelligence investigation to a criminal investigation." Please state specifically what law or laws prevented such information-sharing prior to PATRIOT?

Response: Prior to the Patriot Act, there were procedures for sharing information between intelligence investigators and criminal agents and prosecutors, but they were difficult, burdensome and usually resulted in less than fulsome sharing. For example, the FISA statute was interpreted to require a "primary purpose" of gathering intelligence in order to secure a FISA Court order. Because of this interpretation of the FISA statute, the Department of Justice and the FISA Court required that certain procedures be followed in order to share intelligence with criminal investigators and prosecutors.

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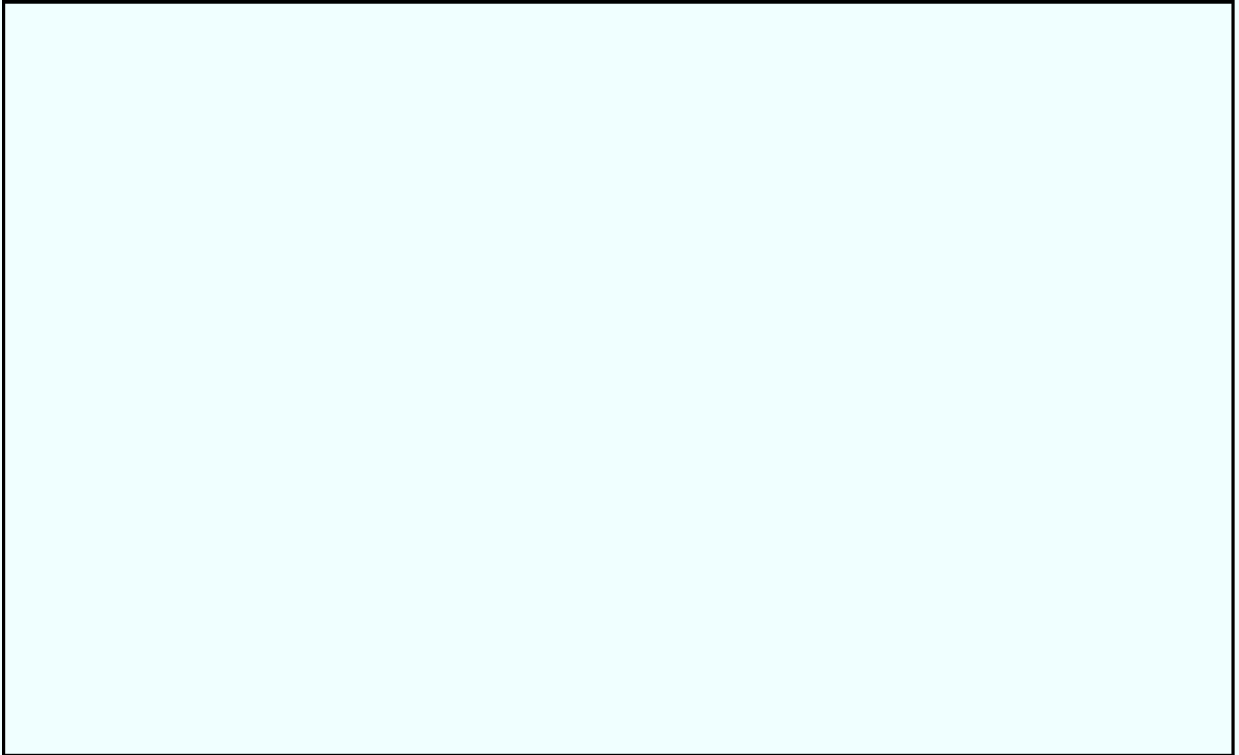
For additional information, see the answer to question 35.

35. OGC. In his statement to the 9/11 Commission, the Attorney General blamed the creation of the so-called "wall" between criminal investigators and intelligence agents on a 1995 memorandum authored by a senior official in the Reno Justice Department, now a member of the 9/11 Commission.

a. Do you agree that the architecture of the wall was in place long before 1995, having its genesis in established legal doctrine dating from 1980? If not, how do you explain the extensive discussion of this issue in the one and only reported opinion of the FISA Court of Review, decided on November 18, 2002?

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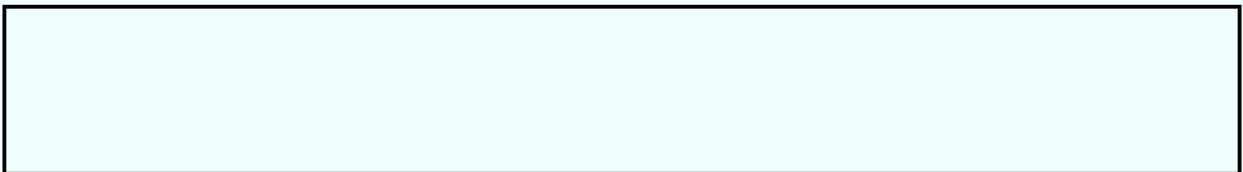
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How did the FBI handle information-sharing between criminal investigators and intelligence agents before 1995?

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b. Do you agree that the Gorelick memo established proactive guidelines amidst a critically important terrorism prosecution to *facilitate* information sharing.

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55. CTD. (Follow-up to Leahy 15) What specific policy changes have you made in response to the Inspector General's report on 9/11 detainees?

OCA Note: To assist CTD in responding, we note that, in response to a Question for the Record regarding a 9/11 Detainee hearing, the FBI indicated that DOJ and DHS had signed a memorandum of understanding (MOU) related to information sharing and, as recommended by the Inspector General, the FBI was working with DOJ to draft an MOU governing the detention of aliens of interest to the FBI. We also indicated that we were working with DHS to establish criteria and procedures for future investigations of alien detainees, including circumstances where a large number of aliens with potential ties to terrorism are detained.

Response: The DOJ and DHS have signed a memorandum of understanding (MOU) relating to information sharing and the FBI is working with DOJ to draft an MOU governing the detention of aliens of interest to the FBI. DOJ is still working with DHS to draft an MOU to establish criteria and procedures for future investigations of alien detainees of national security interest. With respect to other policy changes, the FBI has worked to establish the Terrorist Screening Center (TSC) and TTIC, which will substantially improve the FBI's ability to obtain information about alien detainees from various agencies and process this information in a timely fashion. The FBI continues to work with the National Security Law Division, ICE, to review alien detainee cases of national security interest on a case-by-case basis.

58. OGC. (Follow-up to Leahy 18A) When will the FISA Management System (FISAMS) be fully operational? With whom is the contract for development of FISAMS? How much will it cost and what funds are being used to pay for it?

Response: The FISA Management System (FISAMS) became operational at the end of January 2004. The FBI trained the largest 13 FBI field offices on the system. These 13 offices are currently processing their FISA requests through the FISAMS,

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which account for approximately 75% of the total FISAs for the FBI. The remaining FBI field offices are in the process of being trained on the FISAMS. [REDACTED]

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High Performance Technologies, Inc. (HPTi) is the contractor for the development of the FISAMS. During FY 2003, we currently have allocated \$900,000 for Version 1.0 of the FISAMS. We are contracting an additional \$1 million with HPTi for enhancements beginning September 2004, which was funded by the Wartime Supplemental Funds received by the FBI. There will be several follow-up versions to further enhance the FISAMS in the future.

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[REDACTED]
FY06 is the first budget cycle the FISA Unit has been able to formally request funding for this project.

59. OGC. (Follow-up to Leahy 18C) Did you personally review the 4 FISA applications reportedly not approved by the FISA court last year? Can you provide any details on why the 4 applications were not approved?

[REDACTED]

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60. OGC. (Follow-up to Leahy 18D) Can you provide us with a blank copy of the FISA Request Form referenced in your response? Will you provide us with a blank copy of the form that the FBI created for requesting business records from the FISA court?

[REDACTED]

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[REDACTED]

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61. OGC. (Follow-up to Leahy 21) Did you refer the question to DOJ OIPR? When? Have you been asked to assist in the response? When?

OCA Note: OCA proposes to respond that the FBI forwarded its responses to DOJ on 10/22/03, including our indication that the answer to Senator Leahy's question 21 called for classified information, which is ordinarily supplied to Congress by DOJ's Office of Intelligence Policy and Review (OIPR). By letter to the Committee dated 3/4/04, DOJ's Office of Legislative Affairs forwarded the Department's responses to the Committee, including the FBI's original response to this question.

Response: OGC concurs with OCA's response.

74. CTD. In June 2003, Glenn Fine, the Inspector General for the Justice Department, found "significant problems in the way the detainees were handled" following 9/11. These problems included a failure by the FBI to distinguish between detainees whom it suspected of having a connection to terrorism and detainees with no connection to terrorism; the inhumane treatment of the detainees at a federal detention center in Brooklyn; and the unnecessarily prolonged detention resulting from the Department's "hold until cleared" policy - made worse by the FBI's failure to give sufficient priority to carrying out clearance investigations. In your opinion, has the Justice Department responded in an appropriate manner to all the abuses identified in the Inspector General's report? What steps has the FBI taken to prevent such abuses from occurring in the future?

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OCA Note: Based on the responses provided by the FBI to Congressional questions following a hearing regarding the 9/11 detainees, we might begin by noting that, as we have previously advised Congress, the FBI worked diligently to determine whether the detainees, all of whom were in the United States illegally, did, in fact, have terrorism connections. When the FBI was able to determine that an alien was not of interest to the investigation, however, the immigration authorities were notified as soon as possible. While many of the investigations of detainees took longer, for reasons discussed in the Inspector General's report, thorough investigation was necessary to ensure that they posed no danger to our national security. Several steps have been taken to ensure that any future detainee matters are handled as efficiently and effectively as possible. [REDACTED]

[REDACTED]

[REDACTED] As the Acting Deputy Attorney General explained in his November 20, 2003 Memorandum to the Inspector General in response to the Inspector General's report, the FBI will work with DHS to establish criteria for future investigations (the specific criteria will depend on the nature of the national emergency). [REDACTED]

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Response: The FBI worked diligently to determine whether the detainees, all of whom were in the United States illegally, did, in fact, have terrorism connections. When the FBI was able to determine that an alien was not of interest to the investigation, however, the immigration authorities were notified as soon as possible. While many of the investigations of detainees took longer, for reasons discussed in the Inspector General's report, thorough investigation was necessary to ensure that they posed no danger to our national security.

Several steps have been taken to ensure that any future detainee matters are handled as efficiently and effectively as possible. [REDACTED]

[REDACTED]

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[REDACTED]
[REDACTED] In addition, as the Acting Deputy Attorney General explained in his November 20, 2003 Memorandum to the Inspector General in response to the Inspector General's report, the FBI will work with DHS to establish criteria for future investigations (the specific criteria will depend on the nature of the national emergency). For example, an effort is underway to prepare an MOU between DHS and DOJ regarding criteria and procedures for determining alien detainees of national security interest. In addition, the creation of TSC and TTIC will greatly improve the FBI's ability to gather information concerning aliens of national security interest and work with the appropriate federal agencies to determine the best means of averting any national security threat, whether through criminal or immigration proceedings. Other initiatives, such as the Foreign Terrorist Tracking Task Force and the National Joint Terrorism Task Force have assisted in permitting better information flow with our law enforcement counterparts and will improve the handling of such cases. [REDACTED]
[REDACTED]

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82. OGC. Title 18 Section 3103a, as amended by Section 213 of the USA-Patriot Act (P.L. 107- 56), provides authority for delaying notice of the execution of search warrants. The following question pertains to the use of the authority provided in this section in investigations or prosecutions related to terrorism during the period of time from September 11, 2001 to the present.

a. In how many such cases has the authorities to delay notification been used?

b. In how many such cases has the authority added by Section 213(b)(1), which allows a delay where "the court finds reasonable cause to believe that providing immediate notification of the execution of the warrant may have an adverse result" been used? Please describe the circumstances in each of these cases.

c. In how many such cases has the authority set forth in 18 U.S.C. 2705(E), which provides for delay in cases which would "otherwise seriously jeopardize an investigation or unduly delay a trial" been used? Please describe the circumstances in each of these cases?

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84. Sections 203(b) and 203(d) of the USA-Patriot Act provide specific authority for the provision of intelligence information acquired in the course of a criminal investigation to elements of the Intelligence Community. Section 901 of the same act makes such disclosure in most cases mandatory. The following questions pertain to the implementation of these sections.

a. OGC. Section 203(c) of the USA-Patriot Act requires the Attorney General to "establish procedures for the disclosure for the disclosure of information" as provided for in Section 203. Have such procedures been promulgated? If so, please provide a copy of those procedures to the Committee.

Response to Q84 a: On September 23, 2002, the Attorney General promulgated guidelines that established the procedures for disclosure of information under Section 203 of the Patriot Act. A copy of the guidelines is attached. The Office of the General Counsel issued an EC advising all Divisions of the procedures. A copy of the EC is attached.

b. OGC. Section 203(b) specifically provides authority "to share electronic, wire, and oral interception information" where such information is foreign intelligence information. What is the method for disseminating such information to the Intelligence Community?

Response: This information may be disseminated in any format deemed appropriate for the particular circumstances. ☐

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(i) In your testimony you made reference to newly-created procedures by which the Federal Bureau of Investigation disseminates intelligence via "electronic intelligence reports" - is this the mechanism used for dissemination of Section 203 (b) material?

(1) If so, how many such reports have been

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issued?

(2) Has the Federal Bureau of Investigation developed procedures to ascertain the quality and value of such intelligence reports?

c. OGC. Section 203(d), the so-called "catch-all" provision, provides a general authority to share foreign intelligence information with the Intelligence Community. What is the method for disseminating such information to the Intelligence Community?

b5

(i) In your testimony you made reference to newly-created procedures by which the Federal Bureau of Investigation disseminates intelligence via "electronic intelligence reports" - is this the mechanism used for dissemination of Section 203(d) material?

(1) If so, how many such reports have been issued?

(2) Has the Federal Bureau of Investigation developed procedures to ascertain the quality and value of such intelligence reports?

d. OGC. Section 905(c) of the USA-Patriot Act requires the Attorney General to "develop procedures for the administration of this section. . . ." Have such procedures been promulgated? If so, please provide a copy of those procedures to the Committee.

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e. Inspection Division. Has the Department of Justice, the Director of Central Intelligence (in his capacity as head of the Intelligence Community) or the Federal Bureau of Investigation received any complaints regarding the application or implementation of Section 203 of the USA-Patriot Act? If so, please describe the nature and disposition of any such complaint.

f. OGC. Based upon the application of this provision of law during the period since its passage, are there changes to this statute which the Congress should consider?

Response:

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OGC strongly believes that Section 203 (b) and (d) should not be allowed to expire on December 31, 2005. The changes brought about by the Patriot Act have significantly increased the ability of the FBI to share information.

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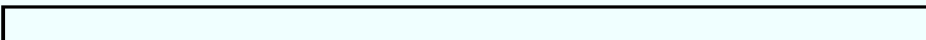
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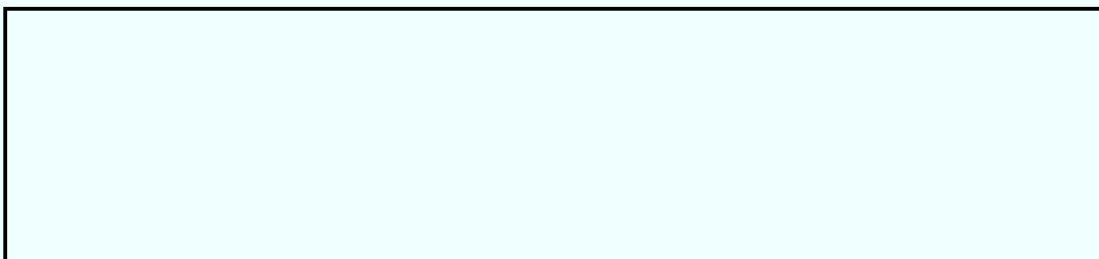


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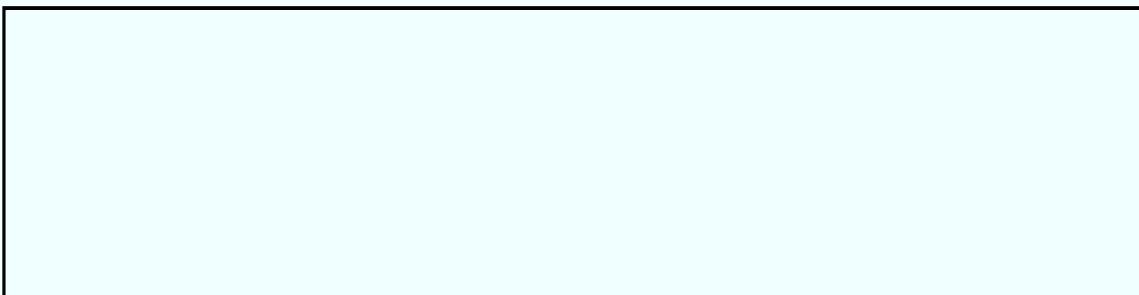
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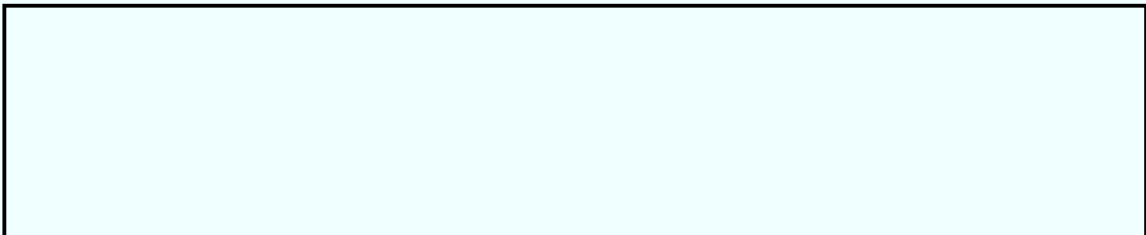
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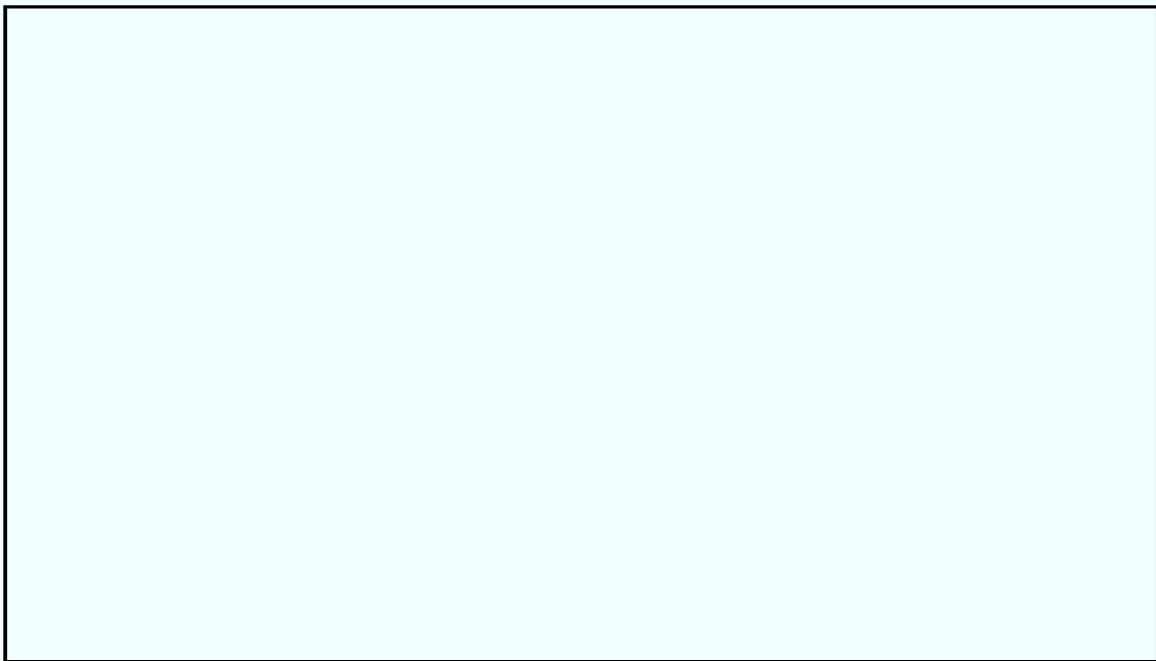
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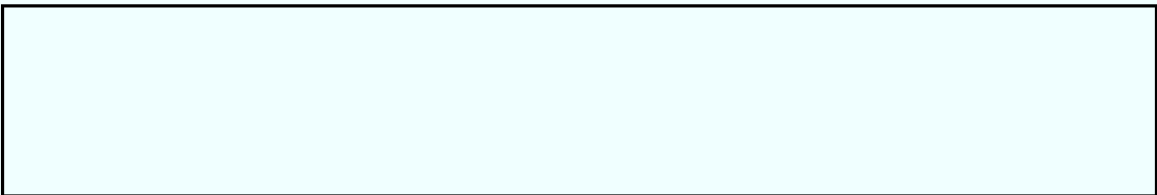
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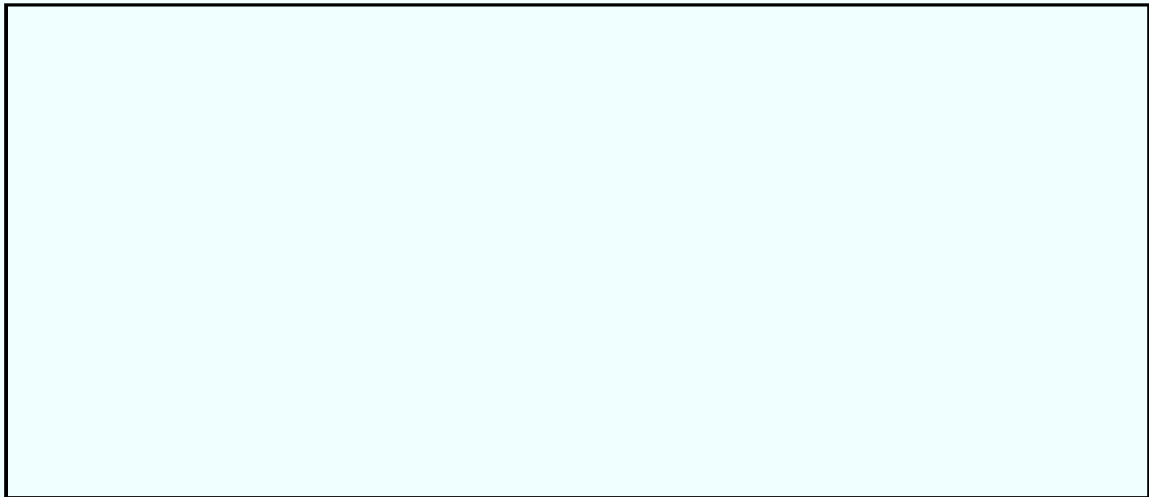
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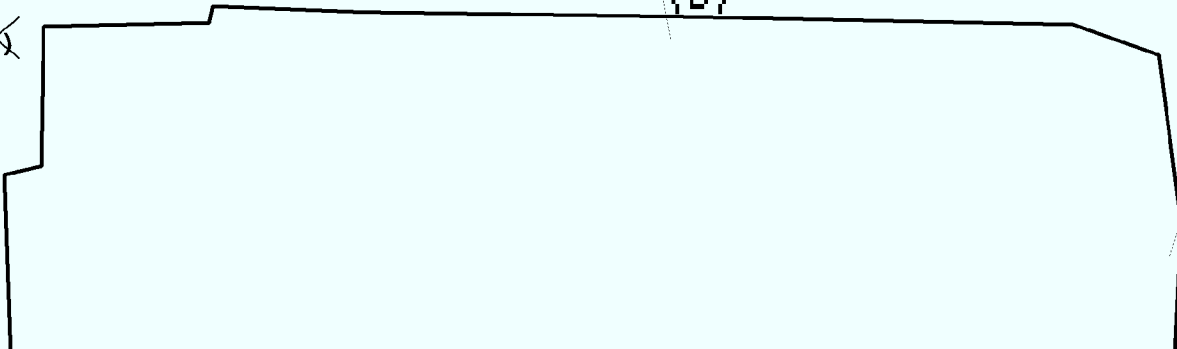
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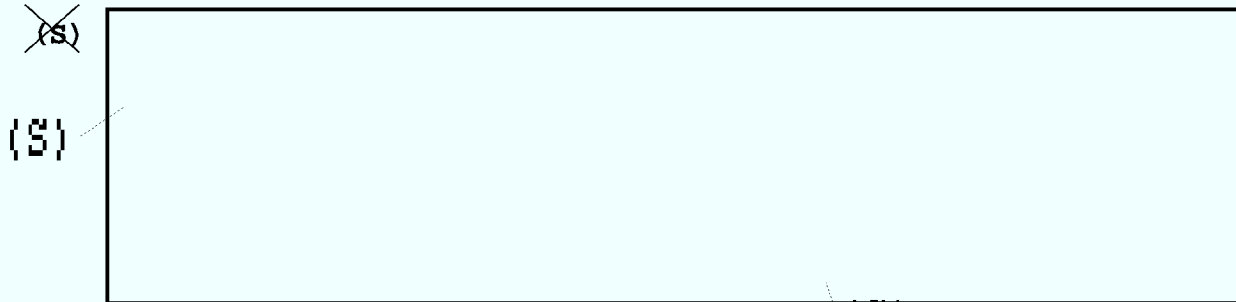
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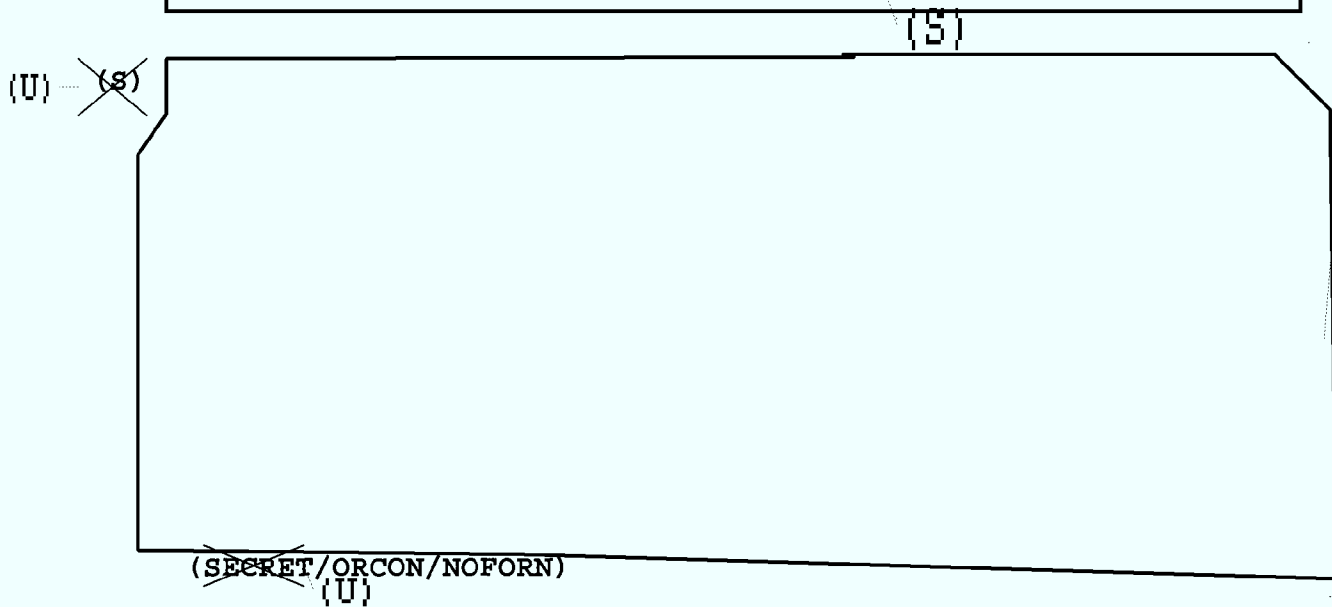
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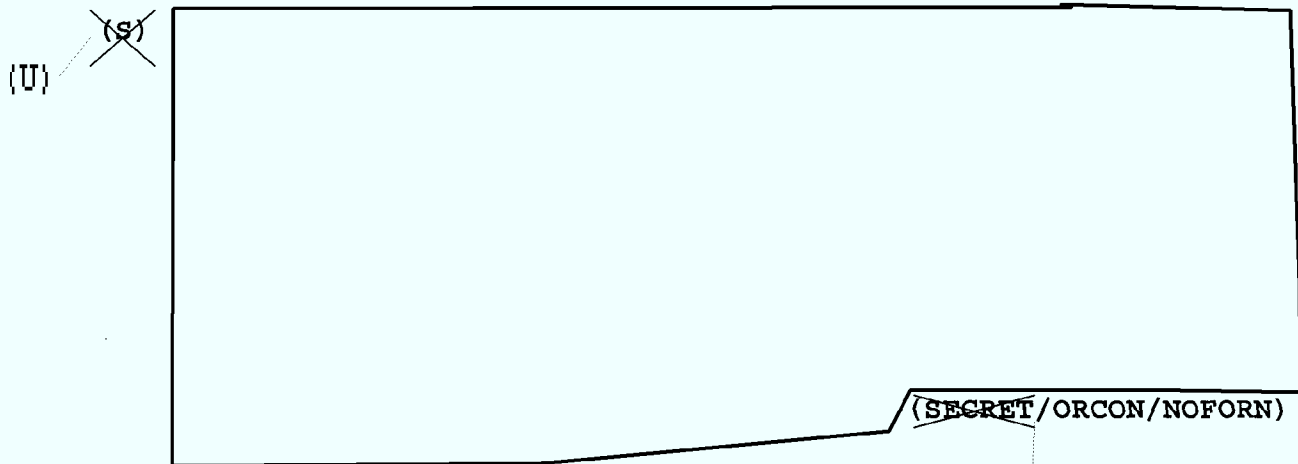
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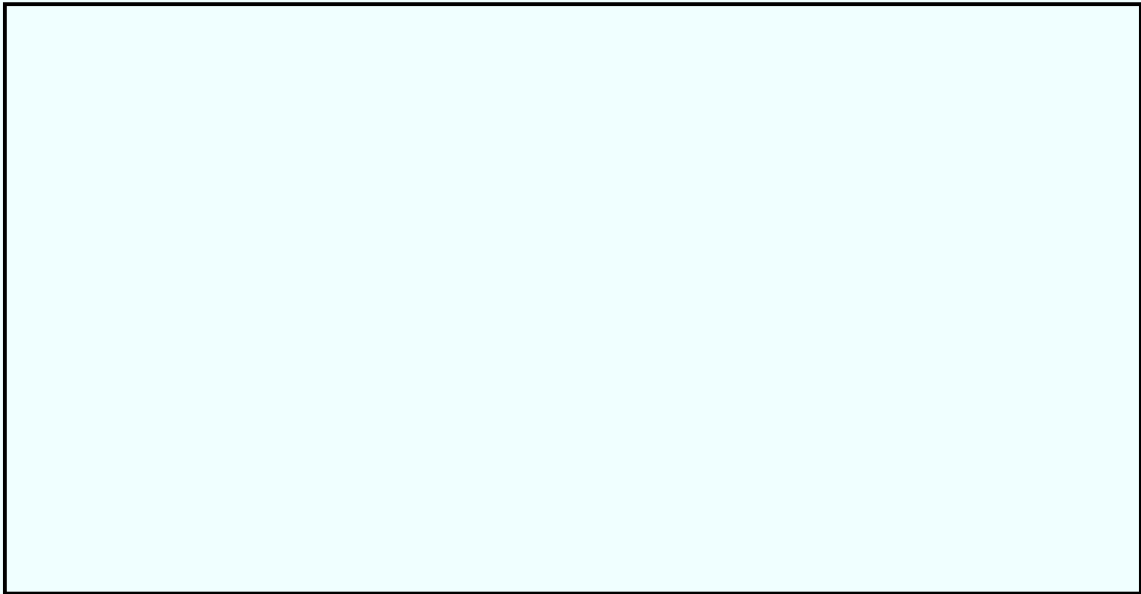
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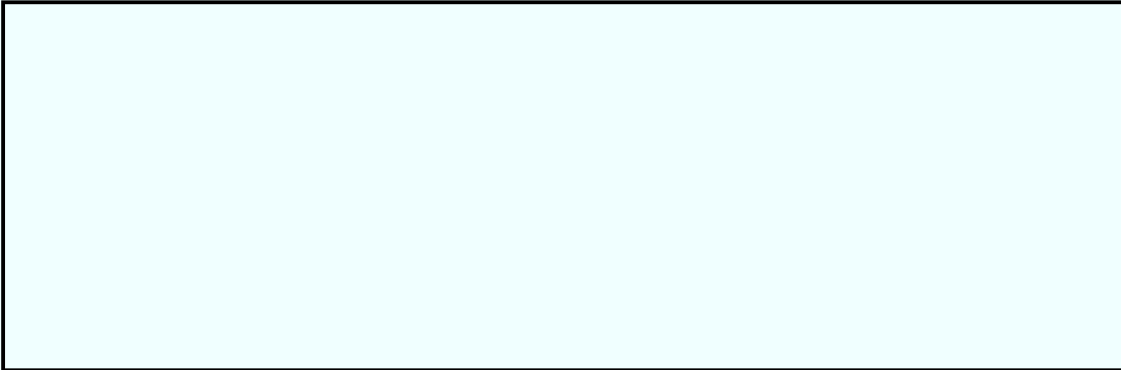
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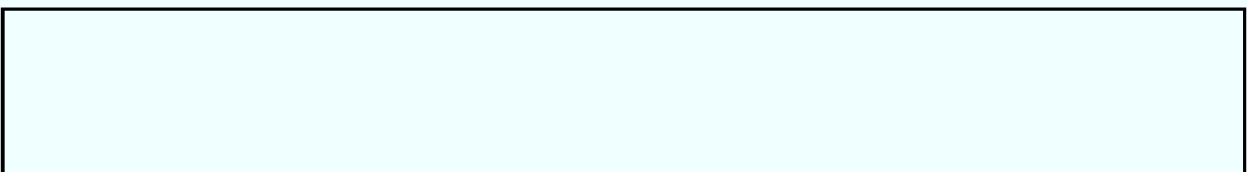


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85. Sections 206 of the USA-Patriot Act, the so-called "roving wiretap" provision, permits the issuance of a FISA warrant in cases where the subject will use multiple communication facilities. This question pertains to the implementation of this section during the time period since the passage of the USA-Patriot Act, October 26, 2001.

Response:

a. How often has this authority been used, and with what success?



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[REDACTED]

b. In your testimony you made reference to newly-created procedures by which the Federal Bureau of Investigation disseminates intelligence via "electronic intelligence reports" - is this the mechanism used for dissemination of material acquired pursuant to the FISA?

Response: FBI intelligence products are an important vehicle for the dissemination of both FISA-derived and non-FISA foreign intelligence information, but not the only one. [REDACTED]

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[REDACTED]

More specifically, the FBI shares many forms of foreign intelligence with other members of the Intelligence Community, [REDACTED]

[REDACTED] through direct classified and unclassified dissemination and through websites on classified Intelligence Community networks. The FBI also shares intelligence with representatives of other elements of the Intelligence Community who participate in Joint Terrorism Task Forces (JTTFs) in the United States or with whom the FBI collaborates in activities abroad. FBI intelligence products shared with the Intelligence Community include Intelligence Information Reports (IIRs), Intelligence Assessments, and Intelligence Bulletins.

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The FBI also disseminates intelligence information through Law Enforcement Online (LEO), a virtual private network that reaches federal, state, and law enforcement agencies at the Sensitive But Unclassified (SBU) level. LEO makes finished FBI intelligence products available, including Intelligence Assessments resulting from analysis of criminal, cyber, and terrorism intelligence. [REDACTED]

[REDACTED] Intelligence Information Reports also are available on LEO at the Law Enforcement Sensitive classification level. The FBI also recently posted the requirements document on LEO, which provided state and local law enforcement a shared view of the terrorist threat and the information needed in every priority area.

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(i) If so, how many such reports have been issued?

Response: In the past two years the FBI's Counterterrorism Division's Terrorism Reports and Requirements Section has disseminated 76 intelligence information reports (IIRs) containing information derived from FISA-authorized surveillance and/or search. (Statistics are not maintained in such a way that would enable us to say whether any of the FISA-derived information in the reports was obtained using "roving authority.") Other FBI Divisions have also issued reports containing FISA-derived information. For example, the Cyber Division has written a total of 24 electronic information reports containing FISA-derived information.

(ii) Has the Federal Bureau of Investigation developed procedures to ascertain the quality and value of such intelligence reports?

Response: The Office of Intelligence promulgated the FBI's Intelligence Information Report Handbook on 9 July. The Handbook establishes the first comprehensive FBI-wide guide for the format and content of raw intelligence reports. The Office of Intelligence is working to develop evaluation guidelines based, in part, on the criteria established in the Handbook for the types of information to be reported and shared with our law enforcement and intelligence community partners, [REDACTED]

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In addition, the FBI's Inspection Division has established evaluation criteria for the value of human source reporting, [REDACTED] [REDACTED] access and responsiveness to local FBI field office, FBI program and national intelligence requirements. The Office of Intelligence is developing guidelines to use this same criteria as a means of evaluating the value of raw intelligence. Initial discussions on this issue have been held with representatives from the Counterintelligence, Counterterrorism, Criminal and Cyber Divisions. The results of these discussions are being incorporated into evaluation guidelines.

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c. Some have read this section as providing for surveillance in cases where neither the identity of the subject or the facility to be used is known -- in effect, allowing for the authorization of FISA surveillance against all phones in a particular geographic area to try to intercept conversation of an unknown person. Is

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this the reading of the statute being adopted by the Federal Bureau of Investigation and the Department of Justice? If not, please provide your interpretation of this authority.

Response: No, the FBI does not interpret the statute as allowing for the authorization of FISA surveillance against all phones in a particular geographic area to try to intercept conversations of an unknown person. In order to make a showing of probable cause, the FISA statute requires a statement of the facts and circumstances relied upon by the applicant for surveillance to to justify the belief that: (1) the target of the electronic surveillance is a foreign power or an agent of a foreign power; and, (2) each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power. Thus, the FISA statute does not permit coverage to be authorized, with or without the "roving wiretap" provision, to allow for surveillance against all persons in a particular geographic area. The FBI has interpreted the "roving" authority as permitting the FBI to request that the Foreign Intelligence Surveillance Court issue a "generic" secondary order, along with specified orders, for a specifically identified FISA target, that the FBI could serve in the future on the unknown (at the time the order is issued) cell phone carrier, Internet service provider, or other communications provider, if the target rapidly switches from one provider to another. The roving wiretap order still requires that a federal law enforcement agent swear in a detailed affidavit to facts establishing probable cause, and still requires a court to make a finding of probable cause before issuing the order. The roving order has the additional requirement of a judge's approval to monitor more than one telephone. But now, each time a target changes his cellular telephone, instead of going through the lengthy application process, government agents can use the same order to monitor the target. This will allow the FBI to go directly to the new carrier and establish surveillance on the authorized target without having to return to the Court for a new secondary order. The FBI views this as a vital and necessary tool to counter certain targets who engage in such actions as a deliberate means of evading surveillance.

(i) Have any briefs been filed with the Foreign Intelligence Surveillance Court on this subject? If so, please provide copies of such briefs to the Committee.

Response: The FBI has filed no such briefs on this subject.

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d. Inspection Division

e. Based upon the application of this provision of law during the period since its passage, are there changes to this statute which the Congress should consider?

Response: No, we request only that the provision be preserved.

86. Section 207 of the USA-Patriot Act extends the time limits provided in the FISA which govern surveillance against agents of a foreign power.

a. Has the Federal Bureau of Investigation or the Department of Justice conducted any review to determine whether, and if so, how many, personnel resources have been saved by this provision? If so, please provide the results to the Committee.

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b. Have there been any cases where, after the passage of the now-extended deadlines it was determined, either by the Department of Justice, the Federal Bureau of Investigation or the Foreign Intelligence Surveillance Court, that surveillance should have been terminated at an earlier point because of the absence of a legally required predicate.

Response: None of which the FBI is aware.

c. Inspection Division

d. Based upon the application of this provision of law during the period since its passage, are there changes to this statute which the Congress should consider?

Response: None at this time.

89. Section 214 of the USA-Patriot Act permits the use of FISA pen register/trap & trace orders with respect to electronic communications, and eliminates the requirement that such use be only in the context of a terrorist or espionage investigation. This question pertains to application of this provision since its

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passage, and to all instances, not only terrorism investigations.

a. OGC. In how many cases has this authority been used?

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(i) How many of such cases were terrorism-related?

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b. OGC. Of the cases in which such authority was used, in how many was a subsequent application for a full surveillance order made pursuant to the FISA, or Chapter 19 of Title 18?

Response: OGC does not have a way to determine how many pen registers evolved into full FISA's.

c. Inspection Division. Has the Intelligence Community, Department of Justice, or Federal Bureau of Investigation developed regulations or directives defining the meaning of non-content communications? If such regulations or directives have been issued, please provide copies to the Committee.

d. OGC. In your testimony you made reference to newly-created procedures by which the Federal Bureau of Investigation disseminates intelligence via "electronic intelligence reports" - is this the mechanism used for dissemination of material acquired pursuant to this section of the FISA?

(i) If so, how many such reports have been issued?

(ii) Has the Federal Bureau of Investigation developed procedures to ascertain the quality and value of such intelligence reports?

Response: Please see answer to Question 85.

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90. Section 215 of the USA-Patriot act authorizes the Foreign Intelligence Surveillance Court to issue orders permitting FBI to access "tangible" items in the course of a terrorism or espionage investigation. The following questions pertain to the application of this provision since its inception.

a. OGC. How many times has this authority been used, and with what success?

b. OGC. Has this provision been used to require the provision of information from a library or bookstore? If so, please describe how many times, and in what circumstances.

c. OGC. In your testimony you compared this provision with existing authority in the criminal context, noting that records such as library records are subject to a grand jury subpoena. However, in criminal cases the propriety and lawfulness of subpoenae are to some extent tested in the adversary process of a trial - how, in the context of the FISA, does such a check occur?

d. OGC. As of October 2004 the Department of Justice advised that this provision had not been used. If that is true, is there a necessity to maintain this provision in law? Why?

(i) With respect to the potential applicability of this section to libraries and bookstores, there has been some concern that the mere prospect of use of the statute has a "chilling effect" on the use of these facilities. Can this chilling effect be minimized, if not eliminated, by incorporating a higher threshold for use in the limited context of libraries and bookstores? If not, why not?

e. OGC. In your testimony you made reference to newly-created procedures by which the Federal Bureau of Investigation disseminates intelligence via "electronic intelligence reports" - is this the mechanism used for dissemination of material acquired pursuant to this section of the FISA?

(i) If so, how many such reports have been issued?

(ii) Has the Federal Bureau of Investigation developed procedures to ascertain the quality and value of such intelligence reports?

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f. Inspection Division. Has the Department of Justice, the Director of Central Intelligence (in his capacity as head of the Intelligence Community) or the Federal Bureau of Investigation received any complaints regarding the application or implementation of Section 215 of the USA-Patriot Act? If so, please describe the nature and disposition of any such complaint.

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g. OGC. Based upon the application of this provision of law during the period since its passage, are there changes to this statute which the Congress should consider?

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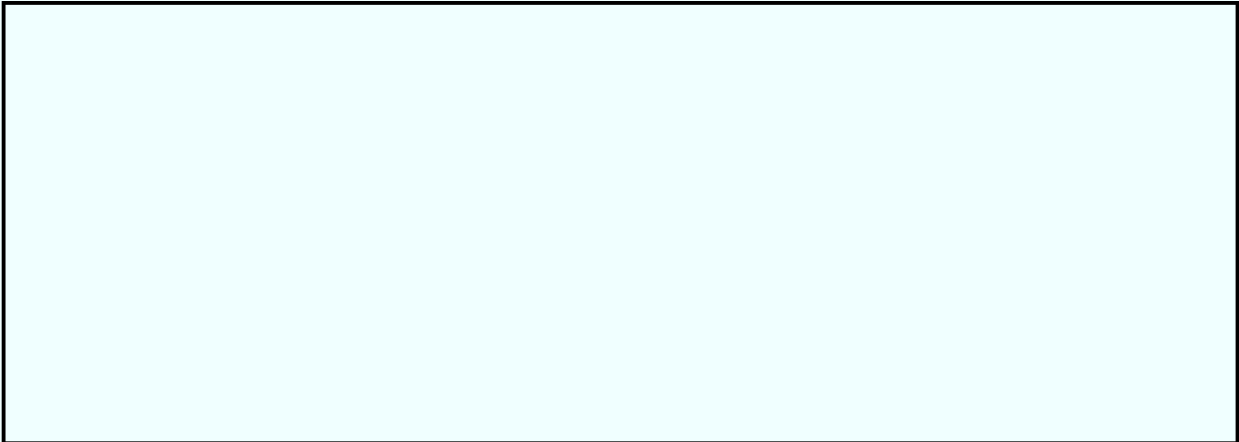
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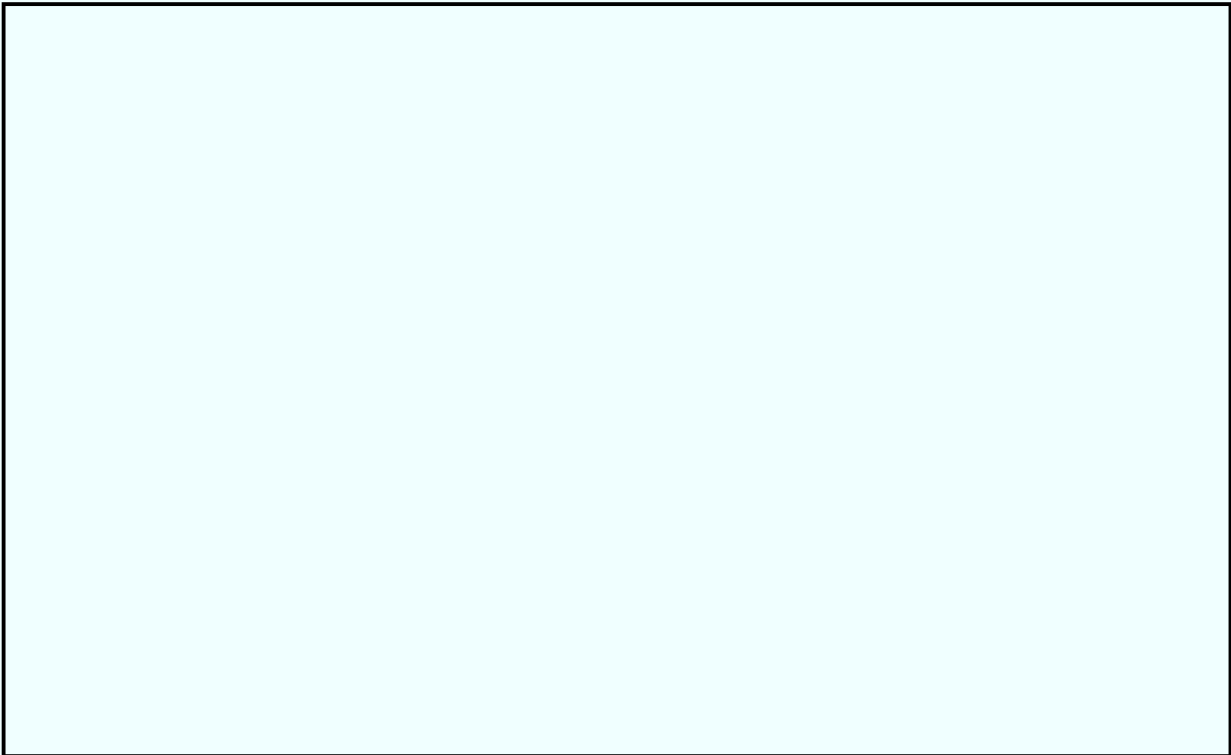
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92. Section 218 of the USA-Patriot Act created the so-called "significant purpose" test for applications pursuant the FISA,

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clarifying the law to recognize that in many cases such surveillance may implicate both a law enforcement and an intelligence interest. This question pertains to the implementation of this provision since its passage.

a. OGC. Please provide the Committee with specific examples, in unclassified form if possible, of cases in which both law enforcement and intelligence interests were "significant."

b. Inspection Division. Has the Department of Justice, the Director of Central Intelligence (in his capacity as head of the Intelligence Community) or the Federal Bureau of Investigation received any complaints regarding the application or implementation of Section 218 of the USA-Patriot Act? If so, please describe the nature and disposition of each such complaint.

c. OGC. Based upon the application of this provision of law during the period since its passage, are there changes to this statute which the Congress should consider?

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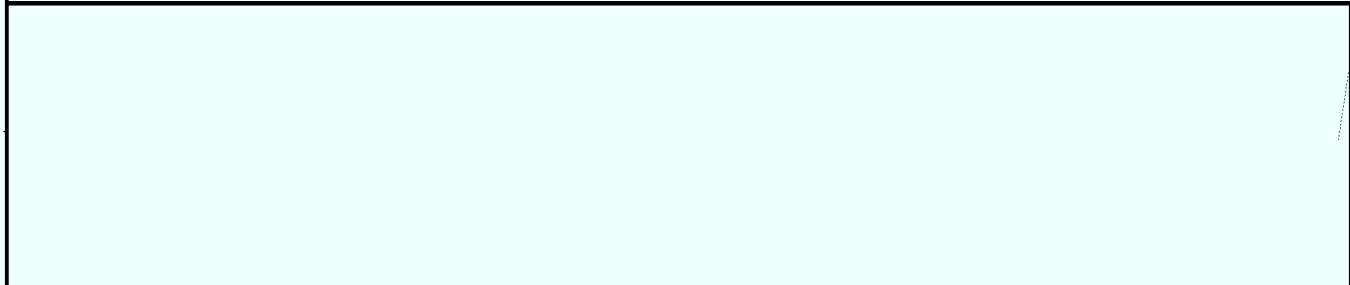
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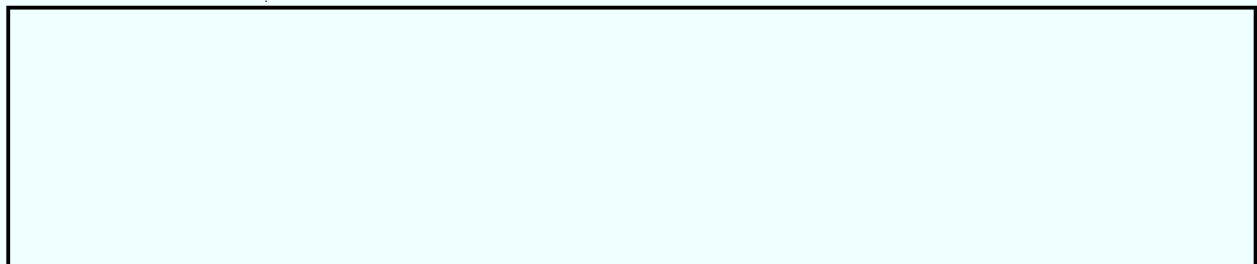


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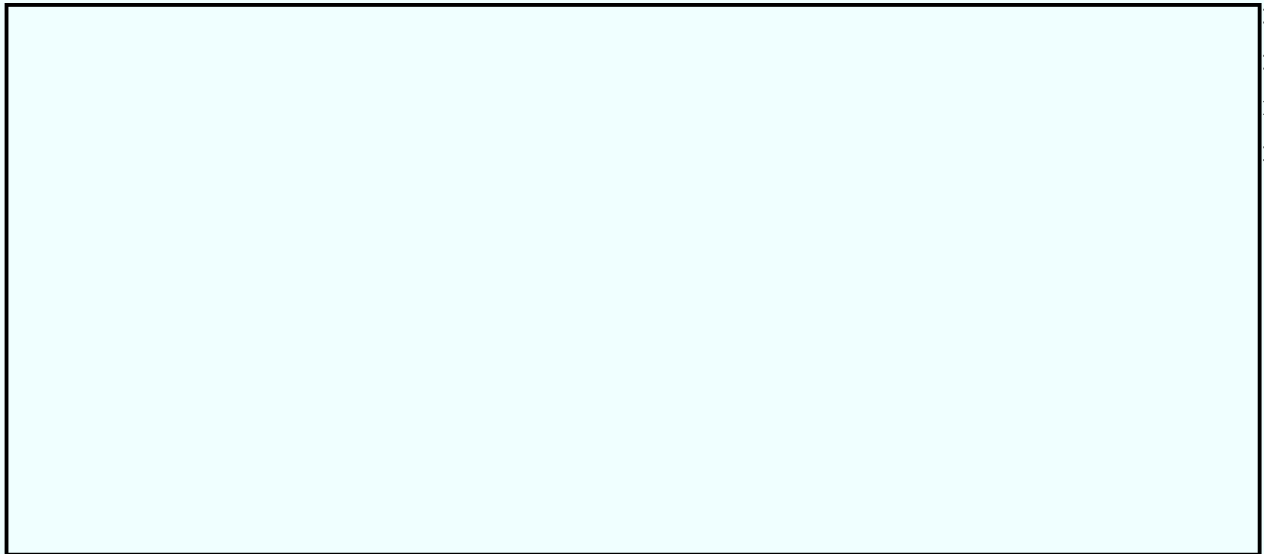
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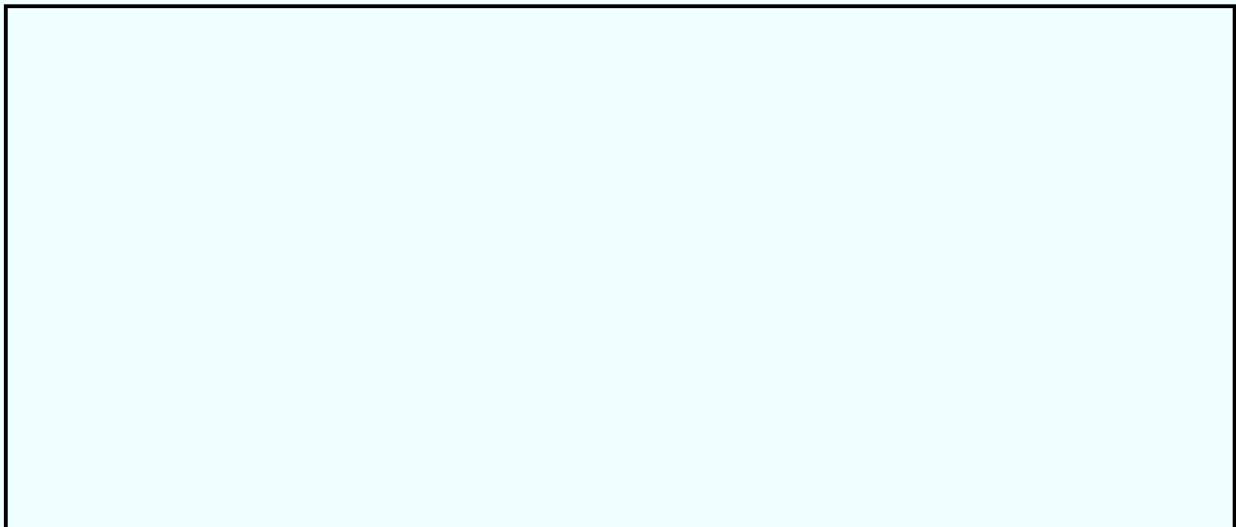
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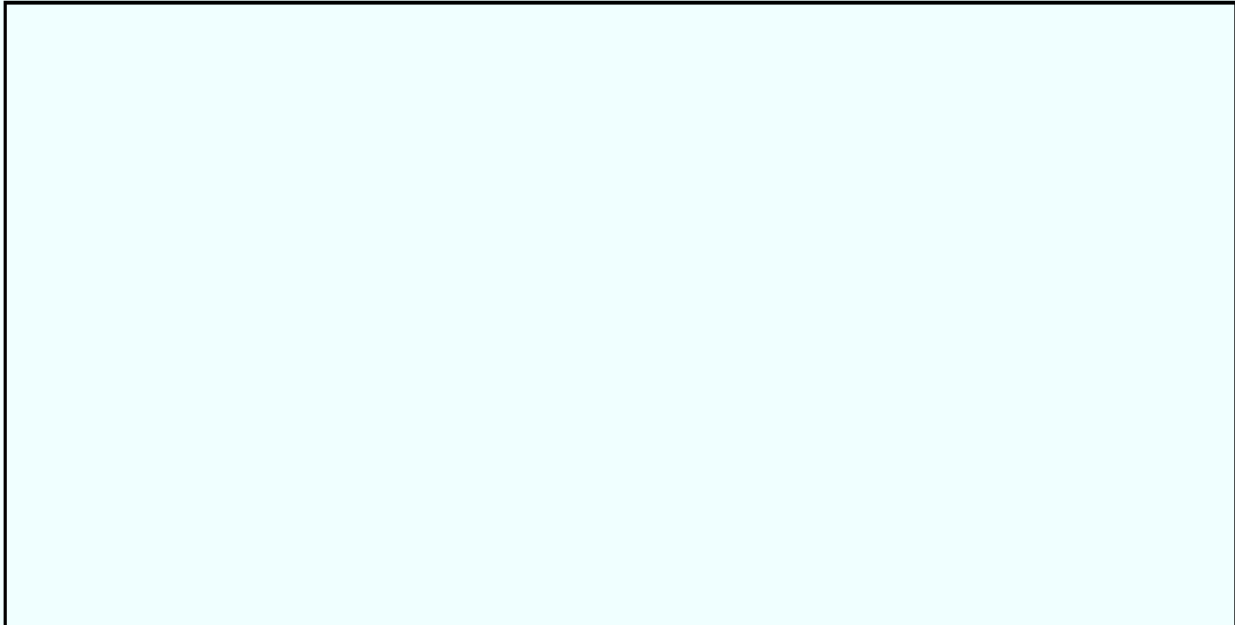
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c. OGC. Based upon the application of this provision of law during the period since its passage, are there changes to this statute which Congress should consider?



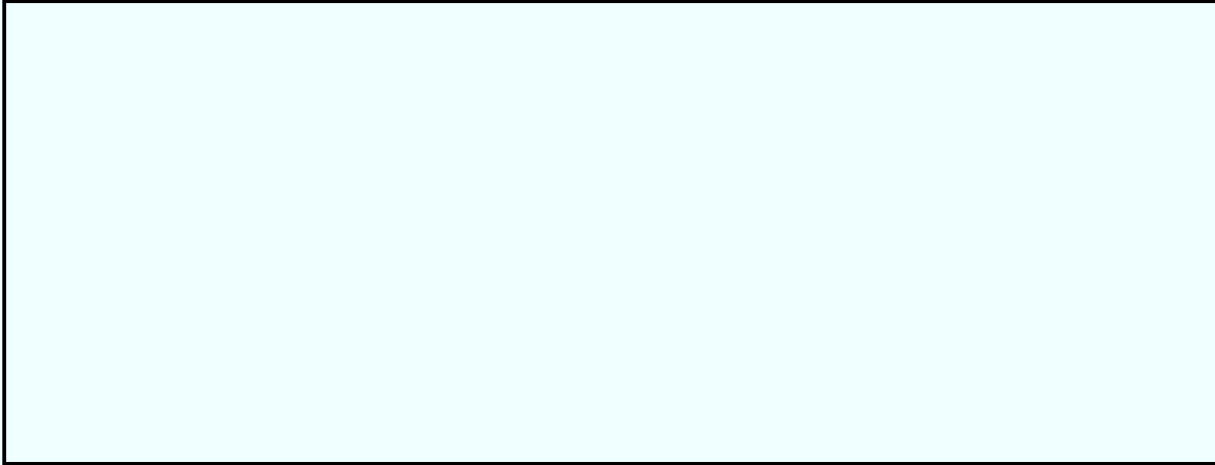
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101 d. OGC. According to court records, no criminal charges were

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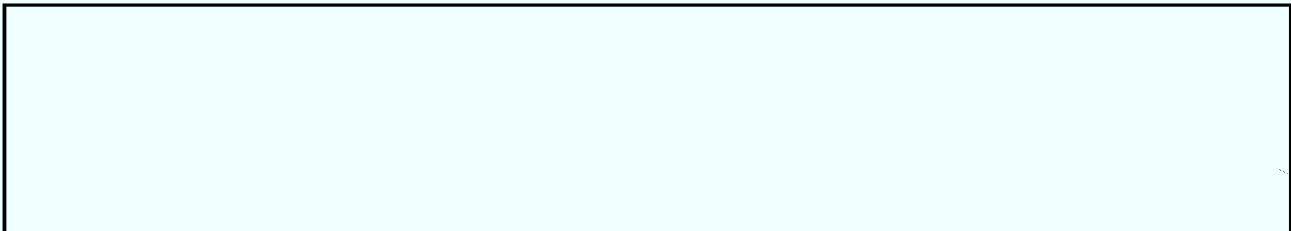
ever filed against Mayfield. Instead, he was detained as a material witness. Why was Mayfield held as a material witness and not charged with any criminal conduct?



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100 e. CTD (in coordination with OGC). Mayfield has stated that he believes that his home was secretly searched before he was declared a material witness and detained. Prior to, or during his detention, was the Mayfield residence or office searched pursuant to a warrant under the Foreign Intelligence Surveillance Act (FISA) or a delayed notification search warrant? If the latter, please indicate (a) the basis for seeking delayed notice of the search warrant and (b) the time period requested and granted for delaying notice.

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103. OGC. In September 2003, the U.S. Department of Justice disclosed that it had not yet used section 215 of the USA PATRIOT Act. On March 9, 2004, I sent a letter to the Attorney General asking him to clarify whether section 215 has been used since September 18, 2003. (Copy of letter attached.)

a. Please indicate whether section 215 has been used since September 18, 2003.

b. If section 215 has been used, please describe how it has been used. How many U.S. persons and non-U.S. persons were targets of the investigation? Was the section 215 order served on a library, newsroom, or other First Amendment sensitive place? Was the product of the search used in a criminal prosecution?

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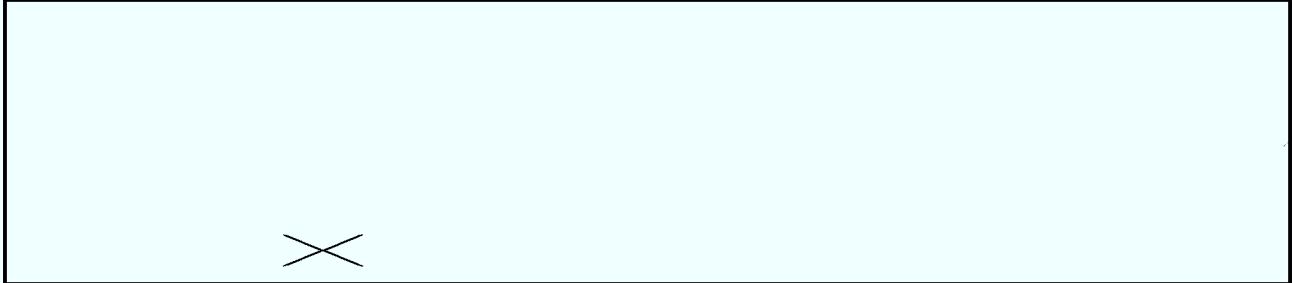
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[REDACTED] (RMD) (FBI)

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 08-12-2005 BY 65179 DMH/KJ

From: [REDACTED] (OGC) (FBI)
Sent: Wednesday, June 22, 2005 4:27 PM
To: [REDACTED] (RMD) (FBI)
Cc: [REDACTED] (OGC) (FBI)
Subject: FW: NSLB Responses - ~~Secret~~ [OGC seeking assistance from CTD]
Importance: High (U)

05-CV-0845

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NON-RECORD

[REDACTED]

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Here is another document that references some of the sections of the Patriot act that is mentioned in the EPIC FOIA request.

[REDACTED]
Assistant General Counsel
National Security Law Branch
Room 5S-214
[REDACTED]

Ext. [REDACTED] (internal use only)

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-----Original Message-----

From: [REDACTED] (OGC) (FBI)
Sent: Tuesday, August 03, 2004 11:17 AM
To: LAMMERT, ELAINE N. (OGC) (FBI)
Subject: FW: NSLB Responses - ~~Secret~~ [OGC seeking assistance from CTD]
Importance: High (U)

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SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Elaine Lammert:

Here is the whole string of emails. Hopefully you can make sense of it.

[REDACTED]
Assistant General Counsel
National Security Law Branch
Ext. [REDACTED]

-----Original Message-----

From: [REDACTED] (OGC) (FBI)
Sent: Friday, July 23, 2004 2:43 PM
To: [REDACTED] (CTD) (FBI)
Subject: FW: NSLB Responses - ~~Secret~~ [OGC seeking assistance from CTD]
Importance: High (U)

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NON-RECORD

[REDACTED]

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6/23/2005

I just received an Outlook Auto response that [REDACTED] is out of the office today and possibly Monday. OGC is trying to respond to OCA by COB today.

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Would you be able to address the following issues (please see emails below).

Any help would be greatly appreciated.

Thank you in advance,

[REDACTED]
Assistant General Counsel
National Security Law Branch
Ext [REDACTED]

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-----Original Message-----

From: [REDACTED] OGC) (FBI)
Sent: Friday, July 23, 2004 2:39 PM
To: [REDACTED] (CTD) (OGA)
Subject: FW: NSLB Responses - ~~Secret~~ [OGC seeking assistance from CTD]
Importance: High

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Thank you for your previous help with the questions from OCA. As indicated in my previous email, we unfortunately need more specific answers to the three questions that you so generously provided earlier.

I am sure that you are extremely busy, but OCA is looking for a response no later than COB today. Therefore, any help would be greatly appreciated.

In addition, we wanted to make sure that CTD agrees with our answer to Question 89d, where we state in our response to refer to question 85.

89d. OGC. In your testimony you made reference to newly-created procedures by which the Federal Bureau of Investigation disseminates intelligence via "electronic intelligence reports" - is this the mechanism used for dissemination of material acquired pursuant to this section of the FISA?

(i) If so, how many such reports have been issued?

(ii) Has the Federal Bureau of Investigation developed procedures to ascertain the quality and value of such intelligence reports?

Response: Please see answer to Question 85.

Please let me know if any of this is possible.

Thank you in advance. Please do not hesitate to contact me for any reason.

6/23/2005

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[REDACTED]

**Assistant General Counsel
National Security Law Branch**

Ext. [REDACTED]

-----Original Message-----

From: [REDACTED] (OGC) (FBI)**Sent:** Wednesday, July 21, 2004 2:41 PM**To:** [REDACTED] (CTD) (OGA)**Subject:** RE: NSLB Responses - ~~Secret~~ (U)

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[REDACTED]

Thank you for your responses. Unfortunately, we still have some follow up questions. Question 84 (b) is specific to section 203 (b) which deals with disclosure to grand jury, title 3 etc. Question 84 (d) specifically deals with Section 203 (d) and question 90(e) deals with Section 215 (business records, etc.) of the USA-Patriot Act.

Is it possible to obtain anything more specific?

I appreciate all the help that you have provided with this, and as always any additional information is greatly appreciated.

Please note that I have attached the selected questions to this email.

If you have any questions, please do not hesitate to contact me.

Again, thank you.

[REDACTED]

**Assistant General Counsel
National Security Law Branch**

Ext. [REDACTED]

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-----Original Message-----

From: [REDACTED] (CTD) (OGA)**Sent:** Tuesday, July 20, 2004 9:19 AM**To:** [REDACTED] (OGC) (FBI)**Cc:** [REDACTED] (CTD) (FBI); [REDACTED] (CTD) (FBI)**Subject:** RE: NSLB Responses - ~~Secret~~ (U)

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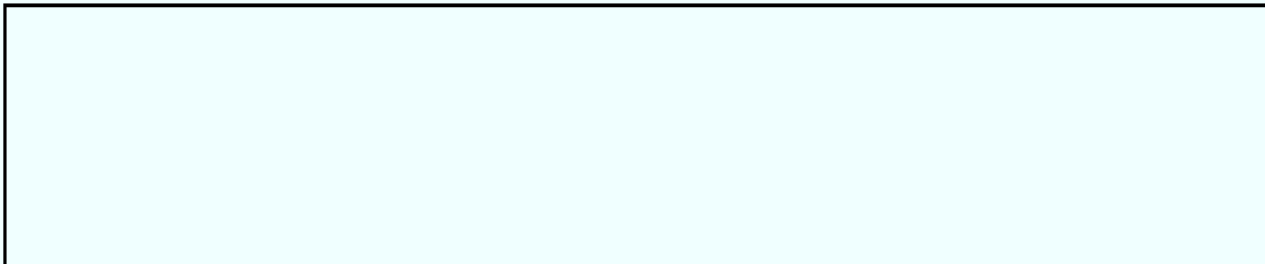
[REDACTED] - you are correct. I believe these questions were all answered in 85.

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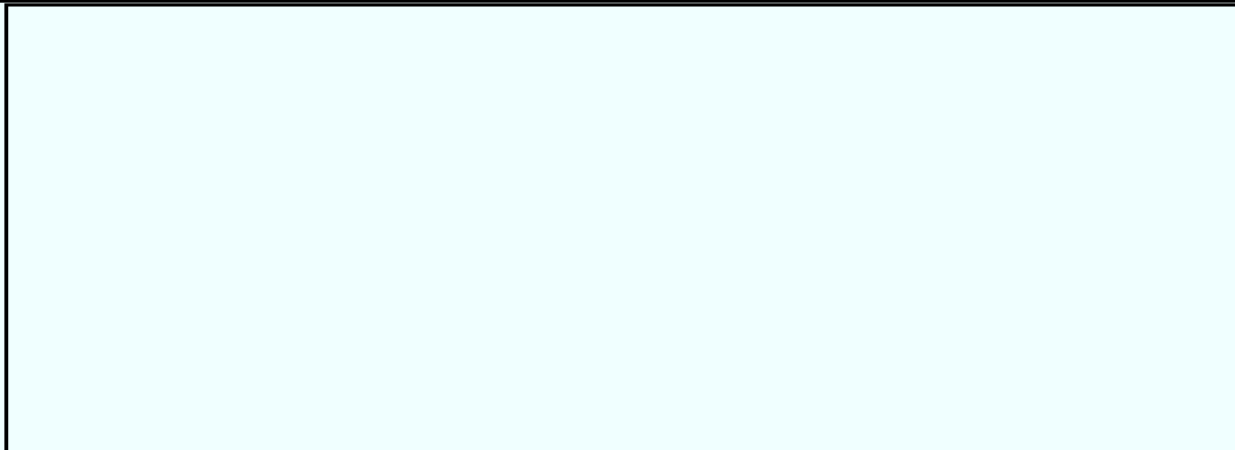
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6/23/2005

Response to 84b: What is the method for disseminating such information to the Intelligence Community?

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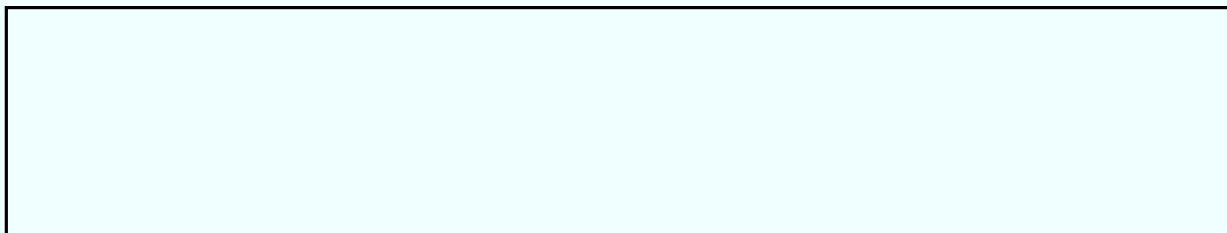
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Response to 84c: What is the method for disseminating such information to the Intelligence Community?

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Response to 90e: Is the "electronic intelligence report" the mechanism used for dissemination of material pursuant to section 215 of the US Patriot Act?

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(i) If so, how many such reports have been issued?



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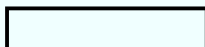
-----Original Message-----

From: [redacted] (OGC) (FBI)**Sent:** Monday, July 19, 2004 4:34 PM**To:** [redacted] (CTD) (OGA)**Subject:** FW: NSLB Responses - ~~Secret~~**Importance:** High

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I just left you a message regarding this issue.

NSLB is seeking assistance with three questions posed by OPA/OCA. Elaine Lammert said you are the person with the answers.

NSLB supplied the following attached answers to OPA/OCA. We incorporated the answer that you supplied to question 85. There are three other answers that we thought CTD would be able to answer better/more complete than OGC and indicated such in OGC's responses. (Response to questions 84(b), 84(c), and 90 (e)). We believe that portions of the responses can be found in the answer to 85 that you previously supplied.

OCA stated that they would not accept OGC's answers to 84(b), 84(c), and 90 (e) and that we needed to contact CTD for the answers.

Please let me know if this is possible. Any help is greatly appreciated.

[redacted]
Assistant General Counsel
National Security Law Branch
Ext. [redacted]

-----Original Message-----

From: LAMMERT, ELAINE N. (OGC) (FBI)

Sent: Monday, July 19, 2004 2:50 PM

To: [redacted] (OGC) (FBI)

Subject: NSLB Responses - ~~Secret~~

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6/23/2005

84. Sections 203(b) and 203(d) of the USA-Patriot Act provide specific authority for the provision of intelligence information acquired in the course of a criminal investigation to elements of the Intelligence Community. Section 901 of the same act makes such disclosure in most cases mandatory. The following questions pertain to the implementation of these sections.

b. OGC. Section 203(b) specifically provides authority "to share electronic, wire, and oral interception information" where such information is foreign intelligence information. What is the method for disseminating such information to the Intelligence Community?

Response: This information may be disseminated in any format deemed appropriate for the particular circumstances. [REDACTED]

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(i) In your testimony you made reference to newly-created procedures by which the Federal Bureau of Investigation disseminates intelligence via "electronic intelligence reports" - is this the mechanism used for dissemination of Section 203 (b) material?

(1) If so, how many such reports have been issued?

(2) Has the Federal Bureau of Investigation developed procedures to ascertain the quality and value of such intelligence reports?

c. OGC. Section 203(d), the so-called "catch-all" provision, provides a general authority to share foreign intelligence information with the Intelligence Community. What is the method for disseminating such information to the Intelligence Community?

Response: The information may be disseminated in any format deemed appropriate for the circumstances. [REDACTED]

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(i) In your testimony you made reference to newly-created procedures by which the Federal Bureau of Investigation disseminates intelligence via "electronic intelligence reports" -

is this the mechanism used for dissemination of Section 203(d) material?

(1) If so, how many such reports have been issued?

(2) Has the Federal Bureau of Investigation developed procedures to ascertain the quality and value of such intelligence reports?

90. Section 215 of the USA-Patriot act authorizes the Foreign Intelligence Surveillance Court to issue orders permitting FBI to access "tangible" items in the course of a terrorism or espionage investigation. The following questions pertain to the application of this provision since its inception

e. OGC. In your testimony you made reference to newly-created procedures by which the Federal Bureau of Investigation disseminates intelligence via "electronic intelligence reports" - is this the mechanism used for dissemination of material acquired pursuant to this section of the FISA?

(i) If so, how many such reports have been issued?

(ii) Has the Federal Bureau of Investigation developed procedures to ascertain the quality and value of such intelligence reports?

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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

DATE: 08-17-2005
CLASSIFIED BY 65179 dmh/kj
REASON: 1.4 (c)
DECLASSIFY ON: 08-17-2030

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05-CV-0845

QUESTIONS FOR THE RECORD FROM DIRECTOR'S 5/20/04 SENATE HEARING
NSLB RESPONSES

28. OGC. During the hearing, Senator Grassley asked you about the retroactive classification of information provided by the FBI to Committee staff related to a whistleblower who previously worked for the FBI translation program. I share Senator Grassley's concern that this order is unrealistic. A great deal of information regarding the whistleblower's claims, including the FBI's corroboration of many of the problems she raised, has been in the public record for more than two years. I appreciated your statement that the retroactive classification order was not intended to place a gag on Congress. However, the notice received by staff members of the Judiciary Committee was very vague, referring only to "some" information conveyed in the briefings. If state secrets are truly implicated by something that was said in an unclassified briefing two years ago, the FBI should provide very specific instructions to current and former staff on what information must be kept secret. Will you instruct your staff to provide more specific information to relevant staff about what, exactly, from the 2002 briefings is classified and what is not?

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33. OGC. You testified that, prior to the PATRIOT Act, "if a court-ordered criminal wiretap turned up intelligence information, FBI agents working on the criminal case could not share that information with agents working on the intelligence case." Please state specifically what law or laws prevented such information-sharing prior to PATRIOT, and whether a court could authorize such information-sharing, regardless of any such law or laws?

Response: Prior to the changes brought about by the Patriot Act, Title 18 Section 2517 was interpreted to solely authorize the sharing of intercepted wire, oral, or electronic

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communications for criminal law enforcement purposes without the need to obtain a court order. Sharing intercepted information for foreign intelligence purpose required a court order and, based upon the statutory language, it was unclear whether a judge would sign an order. The changes to the Patriot Act clearly allow the sharing of foreign intelligence information developed during a court-ordered criminal wiretap with the agents working intelligence cases.

34. OGC. You further testified that, prior to the PATRIOT Act, "information could not be shared from an intelligence investigation to a criminal investigation." Please state specifically what law or laws prevented such information-sharing prior to PATRIOT?

Response: Prior to the Patriot Act, there were procedures for sharing information between intelligence investigators and criminal agents and prosecutors, but they were difficult, burdensome and usually resulted in less than fulsome sharing. For example, the FISA statute was interpreted to require a "primary purpose" of gathering intelligence in order to secure a FISA Court order. Because of this interpretation of the FISA statute, the Department of Justice and the FISA Court required that certain procedures be followed in order to share intelligence with criminal investigators and prosecutors.

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For additional information, see the answer to question 35.

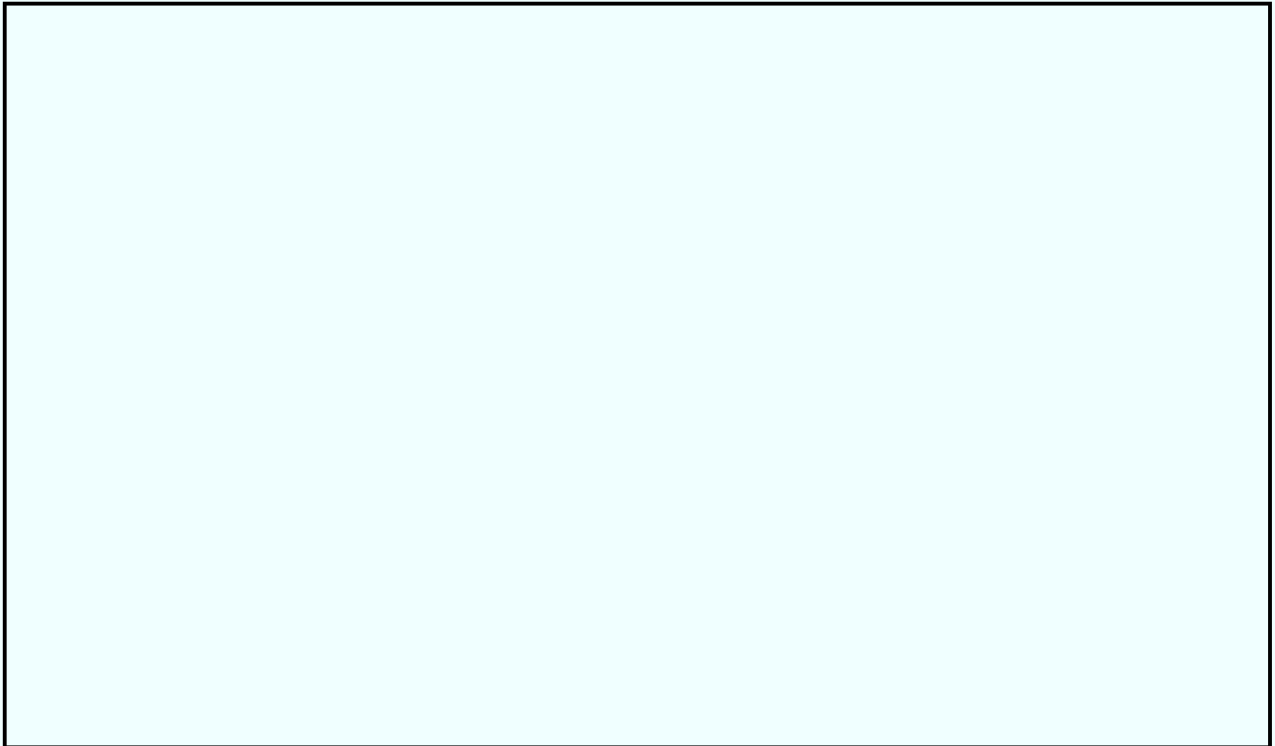
35. OGC. In his statement to the 9/11 Commission, the Attorney General blamed the creation of the so-called "wall" between criminal investigators and intelligence agents on a 1995 memorandum authored by a senior official in the Reno Justice Department, now a member of the 9/11 Commission.

a. Do you agree that the architecture of the wall was in place long before 1995, having its genesis in established legal doctrine dating from 1980? If not, how do you explain the extensive discussion of this issue in the one and only reported opinion of the FISA Court of Review, decided on November 18, 2002?

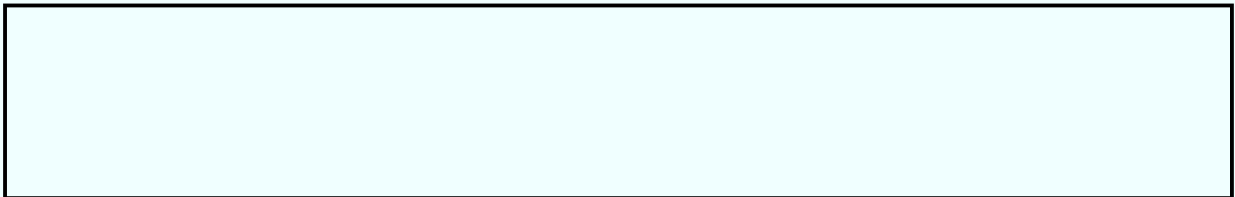
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How did the FBI handle information-sharing between criminal investigators and intelligence agents before 1995?

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b. Do you agree that the Gorelick memo established proactive guidelines amidst a critically important terrorism prosecution to *facilitate* information sharing.

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55. CTD. (Follow-up to Leahy 15) What specific policy changes have you made in response to the Inspector General's report on 9/11 detainees?

OCA Note: To assist CTD in responding, we note that, in response to a Question for the Record regarding a 9/11 Detainee hearing, the FBI indicated that DOJ and DHS had signed a memorandum of understanding (MOU) related to information sharing and, as recommended by the Inspector General, the FBI was working with DOJ to draft an MOU governing the detention of aliens of interest to the FBI. We also indicated that we were working with DHS to establish criteria and procedures for future investigations of alien detainees, including circumstances where a large number of aliens with potential ties to terrorism are detained.

Response: The DOJ and DHS have signed a memorandum of understanding (MOU) relating to information sharing and the FBI is working with DOJ to draft an MOU governing the detention of aliens of interest to the FBI. DOJ is still working with DHS to draft an MOU to establish criteria and procedures for future investigations of alien detainees of national security interest. With respect to other policy changes, the FBI has worked to establish the Terrorist Screening Center (TSC) and TTIC, which will substantially improve the FBI's ability to obtain information about alien detainees from various agencies and process this information in a timely fashion. The FBI continues to work with the National Security Law Division, ICE, to review alien detainee cases of national security interest on a case-by-case basis.

58. OGC. (Follow-up to Leahy 18A) When will the FISA Management System (FISAMS) be fully operational? With whom is the contract for development of FISAMS? How much will it cost and what funds are being used to pay for it?

Response: The FISA Management System (FISAMS) became operational at the end of January 2004. The FBI trained the largest 13 FBI field offices on the system. These 13 offices are currently processing their FISA requests through the FISAMS,

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which account for approximately 75% of the total FISAs for the FBI. The remaining FBI field offices are in the process of being trained on the FISAMS. [REDACTED]
[REDACTED]

High Performance Technologies, Inc. (HPTi) is the contractor for the development of the FISAMS. During FY 2003, we currently have allocated \$900,000 for Version 1.0 of the FISAMS. We are contracting an additional \$1 million with HPTi for enhancements beginning September 2004, which was funded by the Wartime Supplemental Funds received by the FBI. There will be several follow-up versions to further enhance the FISAMS in the future.

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[REDACTED]
FY06 is the first budget cycle the FISA Unit has been able to formally request funding for this project.

59. OGC. (Follow-up to Leahy 18C) Did you personally review the 4 FISA applications reportedly not approved by the FISA court last year? Can you provide any details on why the 4 applications were not approved?

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60. OGC. (Follow-up to Leahy 18D) Can you provide us with a blank copy of the FISA Request Form referenced in your response? Will you provide us with a blank copy of the form that the FBI created for requesting business records from the FISA court?

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61. OGC. (Follow-up to Leahy 21) Did you refer the question to DOJ OIPR? When? Have you been asked to assist in the response? When?

OCA Note: OCA proposes to respond that the FBI forwarded its responses to DOJ on 10/22/03, including our indication that the answer to Senator Leahy's question 21 called for classified information, which is ordinarily supplied to Congress by DOJ's Office of Intelligence Policy and Review (OIPR). By letter to the Committee dated 3/4/04, DOJ's Office of Legislative Affairs forwarded the Department's responses to the Committee, including the FBI's original response to this question.

Response: OGC concurs with OCA's response.

74. CTD. In June 2003, Glenn Fine, the Inspector General for the Justice Department, found "significant problems in the way the detainees were handled" following 9/11. These problems included a failure by the FBI to distinguish between detainees whom it suspected of having a connection to terrorism and detainees with no connection to terrorism; the inhumane treatment of the detainees at a federal detention center in Brooklyn; and the unnecessarily prolonged detention resulting from the Department's "hold until cleared" policy - made worse by the FBI's failure to give sufficient priority to carrying out clearance investigations. In your opinion, has the Justice Department responded in an appropriate manner to all the abuses identified in the Inspector General's report? What steps has the FBI taken to prevent such abuses from occurring in the future?

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OCA Note: Based on the responses provided by the FBI to Congressional questions following a hearing regarding the 9/11 detainees, we might begin by noting that, as we have previously advised Congress, the FBI worked diligently to determine whether the detainees, all of whom were in the United States illegally, did, in fact, have terrorism connections. When the FBI was able to determine that an alien was not of interest to the investigation, however, the immigration authorities were notified as soon as possible. While many of the investigations of detainees took longer, for reasons discussed in the Inspector General's report, thorough investigation was necessary to ensure that they posed no danger to our national security. Several steps have been taken to ensure that any future detainee matters are handled as efficiently and effectively as possible. [REDACTED]

[REDACTED] As the Acting Deputy Attorney General explained in his November 20, 2003 Memorandum to the Inspector General in response to the Inspector General's report, the FBI will work with DHS to establish criteria for future investigations (the specific criteria will depend on the nature of the national emergency). [REDACTED]

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Response: The FBI worked diligently to determine whether the detainees, all of whom were in the United States illegally, did, in fact, have terrorism connections. When the FBI was able to determine that an alien was not of interest to the investigation, however, the immigration authorities were notified as soon as possible. While many of the investigations of detainees took longer, for reasons discussed in the Inspector General's report, thorough investigation was necessary to ensure that they posed no danger to our national security.

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Several steps have been taken to ensure that any future detainee matters are handled as efficiently and effectively as possible. [REDACTED]

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[redacted]
[redacted] In addition, as the Acting Deputy Attorney General explained in his November 20, 2003 Memorandum to the Inspector General in response to the Inspector General's report, the FBI will work with DHS to establish criteria for future investigations (the specific criteria will depend on the nature of the national emergency). For example, an effort is underway to prepare an MOU between DHS and DOJ regarding criteria and procedures for determining alien detainees of national security interest. In addition, the creation of TSC and TTIC will greatly improve the FBI's ability to gather information concerning aliens of national security interest and work with the appropriate federal agencies to determine the best means of averting any national security threat, whether through criminal or immigration proceedings. Other initiatives, such as the Foreign Terrorist Tracking Task Force and the National Joint Terrorism Task Force have assisted in permitting better information flow with our law enforcement counterparts and will improve the handling of such cases. [redacted]
[redacted]

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82. OGC. Title 18 Section 3103a, as amended by Section 213 of the USA-Patriot Act (P.L. 107- 56), provides authority for delaying notice of the execution of search warrants. The following question pertains to the use of the authority provided in this section in investigations or prosecutions related to terrorism during the period of time from September 11, 2001 to the present.

a. In how many such cases has the authorities to delay notification been used?

b. In how many such cases has the authority added by Section 213(b)(1), which allows a delay where "the court finds reasonable cause to believe that providing immediate notification of the execution of the warrant may have an adverse result" been used? Please describe the circumstances in each of these cases.

c. In how many such cases has the authority set forth in 18 U.S.C. 2705(E), which provides for delay in cases which would "otherwise seriously jeopardize an investigation or unduly delay a trial" been used? Please describe the circumstances in each of these cases?

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84. Sections 203(b) and 203(d) of the USA-Patriot Act provide specific authority for the provision of intelligence information acquired in the course of a criminal investigation to elements of the Intelligence Community. Section 901 of the same act makes such disclosure in most cases mandatory. The following questions pertain to the implementation of these sections.

a. OGC. Section 203(c) of the USA-Patriot Act requires the Attorney General to "establish procedures for the disclosure for the disclosure of information" as provided for in Section 203. Have such procedures been promulgated? If so, please provide a copy of those procedures to the Committee.

Response to Q84 a: On September 23, 2002, the Attorney General promulgated guidelines that established the procedures for disclosure of information under Section 203 of the Patriot Act. A copy of the guidelines is attached. The Office of the General Counsel issued an EC advising all Divisions of the procedures. A copy of the EC is attached.

b. OGC. Section 203(b) specifically provides authority "to share electronic, wire, and oral interception information" where such information is foreign intelligence information. What is the method for disseminating such information to the Intelligence Community?

Response: This information may be disseminated in any format deemed appropriate for the particular circumstances.

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(i) In your testimony you made reference to newly-created procedures by which the Federal Bureau of Investigation disseminates intelligence via "electronic intelligence reports" - is this the mechanism used for dissemination of Section 203 (b) material?

(1) If so, how many such reports have been

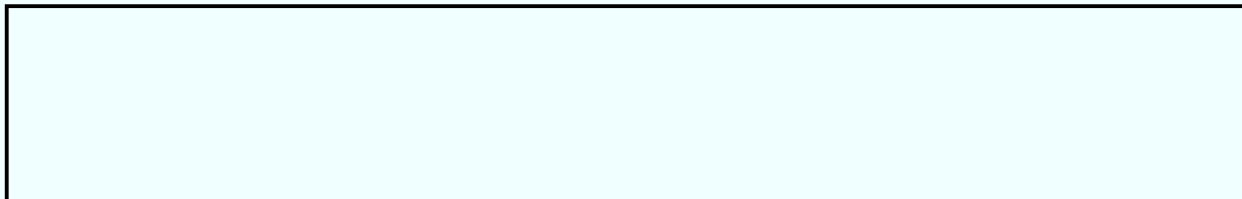
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issued?

(2) Has the Federal Bureau of Investigation developed procedures to ascertain the quality and value of such intelligence reports?

c. OGC. Section 203(d), the so-called "catch-all" provision, provides a general authority to share foreign intelligence information with the Intelligence Community. What is the method for disseminating such information to the Intelligence Community?



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(i) In your testimony you made reference to newly-created procedures by which the Federal Bureau of Investigation disseminates intelligence via "electronic intelligence reports" - is this the mechanism used for dissemination of Section 203(d) material?

(1) If so, how many such reports have been issued?

(2) Has the Federal Bureau of Investigation developed procedures to ascertain the quality and value of such intelligence reports?

d. OGC. Section 905(c) of the USA-Patriot Act requires the Attorney General to "develop procedures for the administration of this section. . . ." Have such procedures been promulgated? If so, please provide a copy of those procedures to the Committee.



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[REDACTED]

e. Inspection Division. Has the Department of Justice, the Director of Central Intelligence (in his capacity as head of the Intelligence Community) or the Federal Bureau of Investigation received any complaints regarding the application or implementation of Section 203 of the USA-Patriot Act? If so, please describe the nature and disposition of any such complaint.

f. OGC. Based upon the application of this provision of law during the period since its passage, are there changes to this statute which the Congress should consider?

Response: [REDACTED]

[REDACTED] OGC strongly believes that Section 203 (b) and (d) should not be allowed to expire on December 31, 2005. The changes brought about by the Patriot Act have significantly increased the ability of the FBI to share information. [REDACTED]

[REDACTED]

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85. Sections 206 of the USA-Patriot Act, the so-called "roving wiretap" provision, permits the issuance of a FISA warrant in cases where the subject will use multiple communication facilities. This question pertains to the implementation of this section during the time period since the passage of the USA-Patriot Act, October 26, 2001.

Response:

a. How often has this authority been used, and with what success?

[REDACTED]

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b. In your testimony you made reference to newly-created procedures by which the Federal Bureau of Investigation disseminates intelligence via "electronic intelligence reports" - is this the mechanism used for dissemination of material acquired pursuant to the FISA?

Response: FBI intelligence products are an important vehicle for the dissemination of both FISA-derived and non-FISA foreign intelligence information, but not the only one. [redacted]

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More specifically, the FBI shares many forms of foreign intelligence with other members of the Intelligence Community. [redacted]

[redacted] through direct classified and unclassified dissemination and through websites on classified Intelligence Community networks. The FBI also shares intelligence with representatives of other elements of the Intelligence Community who participate in Joint Terrorism Task Forces (JTTFs) in the United States or with whom the FBI collaborates in activities abroad. FBI intelligence products shared with the Intelligence Community include Intelligence Information Reports (IIRs), Intelligence Assessments, and Intelligence Bulletins. b5

The FBI also disseminates intelligence information through Law Enforcement Online (LEO), a virtual private network that reaches federal, state, and law enforcement agencies at the Sensitive But Unclassified (SBU) level. LEO makes finished FBI intelligence products available, including Intelligence Assessments resulting from analysis of criminal, cyber, and terrorism intelligence. [redacted]

[redacted] Intelligence Information Reports also are available on LEO at the Law Enforcement Sensitive classification level. The FBI also recently posted the requirements document on LEO, which provided state and local law enforcement a shared view of the terrorist threat and the information needed in every priority area. b5

(i) If so, how many such reports have been issued?

Response: In the past two years the FBI's Counterterrorism

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Division's Terrorism Reports and Requirements Section has disseminated 76 intelligence information reports (IIRs) containing information derived from FISA-authorized surveillance and/or search. (Statistics are not maintained in such a way that would enable us to say whether any of the FISA-derived information in the reports was obtained using "roving authority.") Other FBI Divisions have also issued reports containing FISA-derived information. For example, the Cyber Division has written a total of 24 electronic information reports containing FISA-derived information.

(ii) Has the Federal Bureau of Investigation developed procedures to ascertain the quality and value of such intelligence reports?

Response: The Office of Intelligence promulgated the FBI's Intelligence Information Report Handbook on 9 July. The Handbook establishes the first comprehensive FBI-wide guide for the format and content of raw intelligence reports. The Office of Intelligence is working to develop evaluation guidelines based, in part, on the criteria established in the Handbook for the types of information to be reported and shared with our law enforcement and intelligence community partners, [REDACTED]

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In addition, the FBI's Inspection Division has established evaluation criteria for the value of human source reporting, [REDACTED] [REDACTED] access and responsiveness to local FBI field office, FBI program and national intelligence requirements. The Office of Intelligence is developing guidelines to use this same criteria as a means of evaluating the value of raw intelligence. Initial discussions on this issue have been held with representatives from the Counterintelligence, Counterterrorism, Criminal and Cyber Divisions. The results of these discussions are being incorporated into evaluation guidelines.

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c. Some have read this section as providing for surveillance in cases where neither the identity of the subject or the facility to be used is known -- in effect, allowing for the authorization of FISA surveillance against all phones in a particular geographic area to try to intercept conversation of an unknown person. Is this the reading of the statute being adopted by the Federal Bureau of Investigation and the Department of Justice? If not, please provide your interpretation of this authority.

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Response: No, the FBI does not interpret the statute as allowing for the authorization of FISA surveillance against all phones in a particular geographic area to try to intercept conversations of an unknown person. In order to make a showing of probable cause, the FISA statute requires a statement of the facts and circumstances relied upon by the applicant for surveillance to justify the belief that: (1) the target of the electronic surveillance is a foreign power or an agent of a foreign power; and, (2) each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power. Thus, the FISA statute does not permit coverage to be authorized, with or without the "roving wiretap" provision, to allow for surveillance against all persons in a particular geographic area. The FBI has interpreted the "roving" authority as permitting the FBI to request that the Foreign Intelligence Surveillance Court issue a "generic" secondary order, along with specified orders, for a specifically identified FISA target, that the FBI could serve in the future on the unknown (at the time the order is issued) cell phone carrier, Internet service provider, or other communications provider, if the target rapidly switches from one provider to another. The roving wiretap order still requires that a federal law enforcement agent swear in a detailed affidavit to facts establishing probable cause, and still requires a court to make a finding of probable cause before issuing the order. The roving order has the additional requirement of a judge's approval to monitor more than one telephone. But now, each time a target changes his cellular telephone, instead of going through the lengthy application process, government agents can use the same order to monitor the target. This will allow the FBI to go directly to the new carrier and establish surveillance on the authorized target without having to return to the Court for a new secondary order. The FBI views this as a vital and necessary tool to counter certain targets who engage in such actions as a deliberate means of evading surveillance.

(i) Have any briefs been filed with the Foreign Intelligence Surveillance Court on this subject? If so, please provide copies of such briefs to the Committee.

Response: The FBI has filed no such briefs on this subject.

d. Inspection Division

e. Based upon the application of this provision of law during

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the period since its passage, are there changes to this statute which the Congress should consider?

Response: No, we request only that the provision be preserved.

86. Section 207 of the USA-Patriot Act extends the time limits provided in the FISA which govern surveillance against agents of a foreign power.

a. Has the Federal Bureau of Investigation or the Department of Justice conducted any review to determine whether, and if so, how many, personnel resources have been saved by this provision? If so, please provide the results to the Committee.

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b. Have there been any cases where, after the passage of the now-extended deadlines it was determined, either by the Department of Justice, the Federal Bureau of Investigation or the Foreign Intelligence Surveillance Court, that surveillance should have been terminated at an earlier point because of the absence of a legally required predicate.

Response: None of which the FBI is aware.

c. Inspection Division

d. Based upon the application of this provision of law during the period since its passage, are there changes to this statute which the Congress should consider?

Response: None at this time.

89. Section 214 of the USA-Patriot Act permits the use of FISA pen register/trap & trace orders with respect to electronic communications, and eliminates the requirement that such use be only in the context of a terrorist or espionage investigation. This question pertains to application of this provision since its passage, and to all instances, not only terrorism investigations.

a. OGC. In how many cases has this authority been used?

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[REDACTED]

(i) How many of such cases were terrorism-related?

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b. OGC. Of the cases in which such authority was used, in how many was a subsequent application for a full surveillance order made pursuant to the FISA, or Chapter 19 of Title 18?

Response: OGC does not have a way to determine how many pen registers evolved into full FISA's.

c. Inspection Division. Has the Intelligence Community, Department of Justice, or Federal Bureau of Investigation developed regulations or directives defining the meaning of non-content communications? If such regulations or directives have been issued, please provide copies to the Committee.

d. OGC. In your testimony you made reference to newly-created procedures by which the Federal Bureau of Investigation disseminates intelligence via "electronic intelligence reports" - is this the mechanism used for dissemination of material acquired pursuant to this section of the FISA?

(i) If so, how many such reports have been issued?

(ii) Has the Federal Bureau of Investigation developed procedures to ascertain the quality and value of such intelligence reports?

Response: Please see answer to Question 85.

90. Section 215 of the USA-Patriot act authorizes the Foreign Intelligence Surveillance Court to issue orders permitting FBI to access "tangible" items in the course of a terrorism or espionage investigation. The following questions pertain to the application

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of this provision since its inception.

a. OGC. How many times has this authority been used, and with what success?

b. OGC. Has this provision been used to require the provision of information from a library or bookstore? If so, please describe how many times, and in what circumstances.

c. OGC. In your testimony you compared this provision with existing authority in the criminal context, noting that records such as library records are subject to a grand jury subpoena. However, in criminal cases the propriety and lawfulness of subpoenae are to some extent tested in the adversary process of a trial - how, in the context of the FISA, does such a check occur?

d. OGC. As of October 2004 the Department of Justice advised that this provision had not been used. If that is true, is there a necessity to maintain this provision in law? Why?

(i) With respect to the potential applicability of this section to libraries and bookstores, there has been some concern that the mere prospect of use of the statute has a "chilling effect" on the use of these facilities. Can this chilling effect be minimized, if not eliminated, by incorporating a higher threshold for use in the limited context of libraries and bookstores? If not, why not?

e. OGC. In your testimony you made reference to newly-created procedures by which the Federal Bureau of Investigation disseminates intelligence via "electronic intelligence reports" - is this the mechanism used for dissemination of material acquired pursuant to this section of the FISA?

(i) If so, how many such reports have been issued?

(ii) Has the Federal Bureau of Investigation developed procedures to ascertain the quality and value of such intelligence reports?

f. Inspection Division. Has the Department of Justice, the Director of Central Intelligence (in his capacity as head of the Intelligence Community) or the Federal Bureau of Investigation

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received any complaints regarding the application or implementation of Section 215 of the USA-Patriot Act? If so, please describe the nature and disposition of any such complaint.

g. OGC. Based upon the application of this provision of law during the period since its passage, are there changes to this statute which the Congress should consider?

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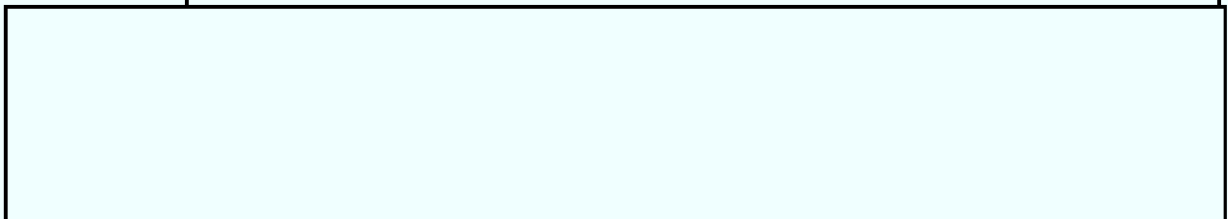
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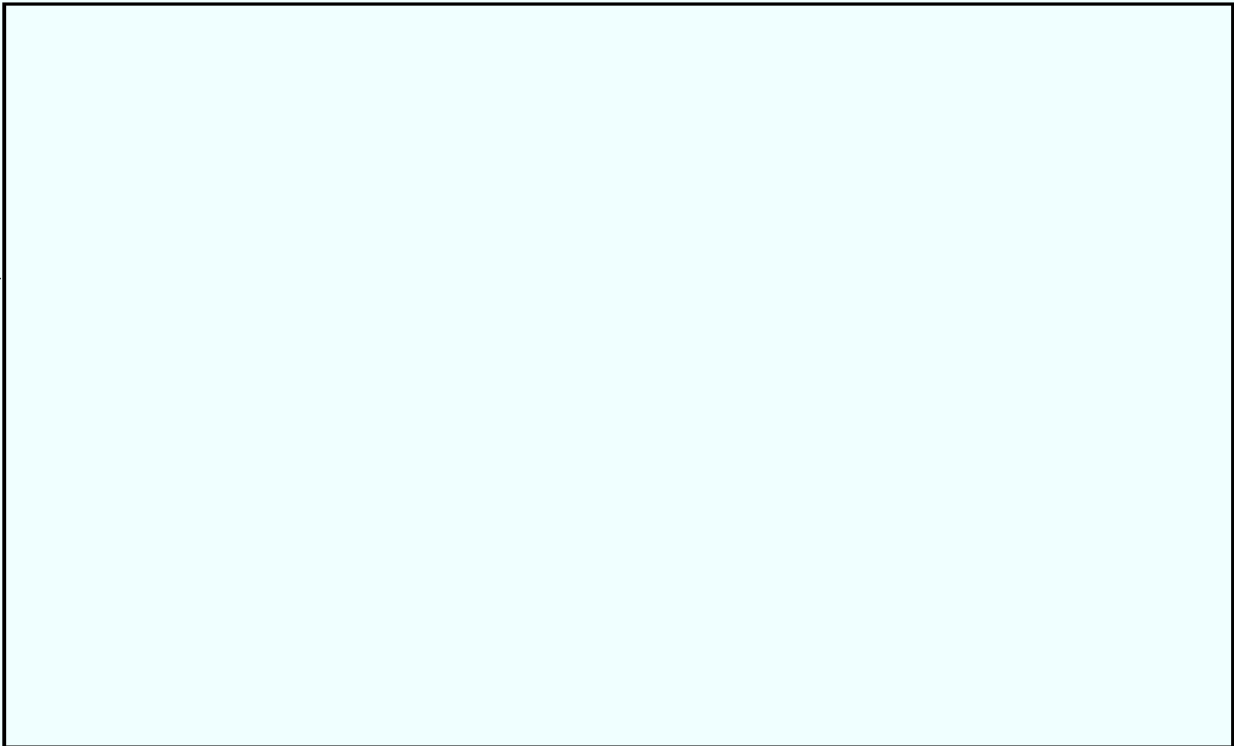
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92. Section 218 of the USA-Patriot Act created the so-called "significant purpose" test for applications pursuant the FISA, clarifying the law to recognize that in many cases such surveillance may implicate both a law enforcement and an intelligence interest. This question pertains to the implementation

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of this provision since its passage.

a. OGC. Please provide the Committee with specific examples, in unclassified form if possible, of cases in which both law enforcement and intelligence interests were "significant."

b. Inspection Division. Has the Department of Justice, the Director of Central Intelligence (in his capacity as head of the Intelligence Community) or the Federal Bureau of Investigation received any complaints regarding the application or implementation of Section 218 of the USA-Patriot Act? If so, please describe the nature and disposition of each such complaint.

c. OGC. Based upon the application of this provision of law during the period since its passage, are there changes to this statute which the Congress should consider?

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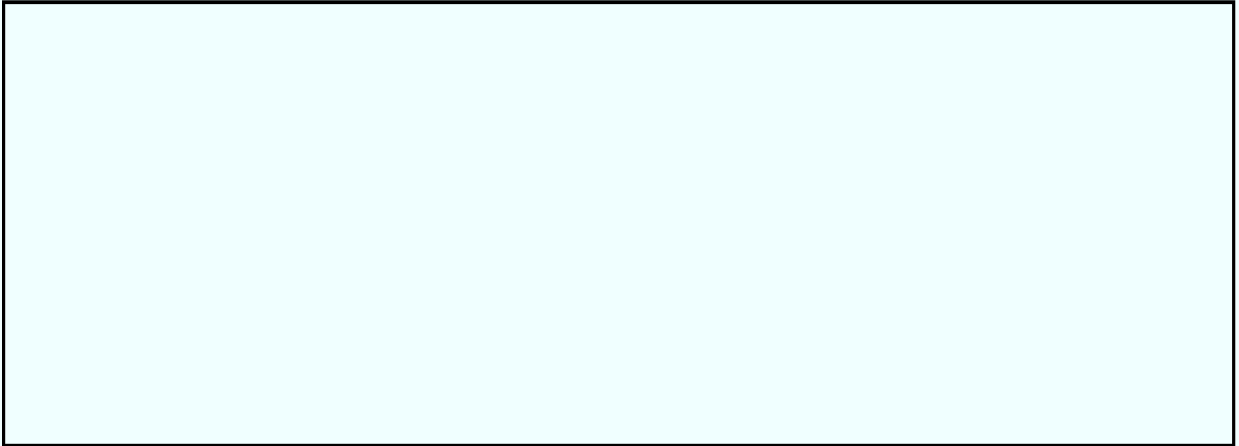
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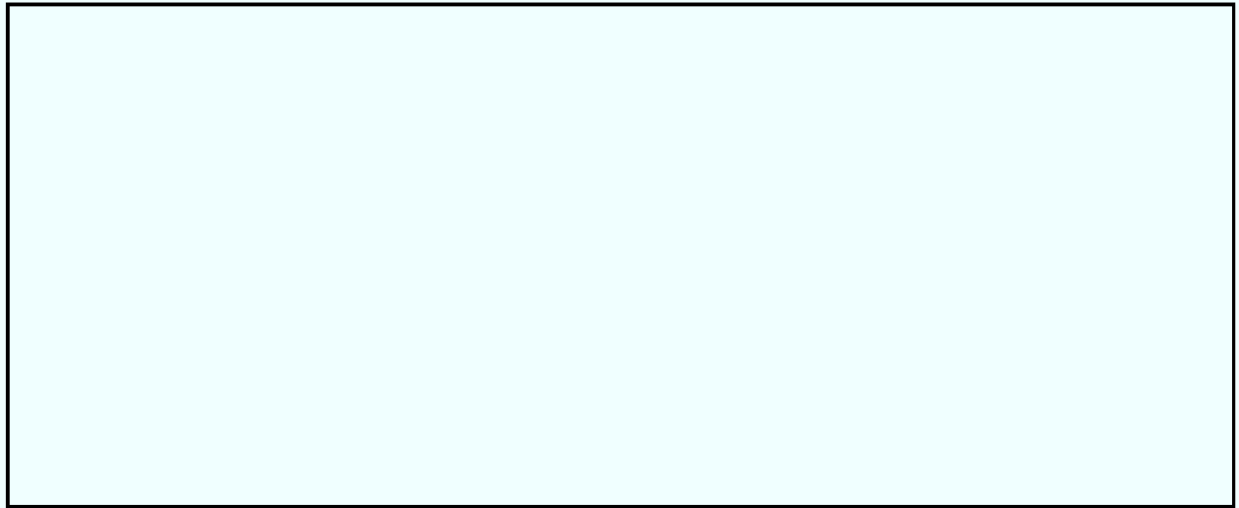
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c. OGC. Based upon the application of this provision of law during the period since its passage, are there changes to this statute which Congress should consider?



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101 d. OGC. According to court records, no criminal charges were ever filed against Mayfield. Instead, he was detained as a material witness. Why was Mayfield held as a material witness and not charged with any criminal conduct?

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100 e. CTD (in coordination with OGC). Mayfield has stated that he believes that his home was secretly searched before he was declared a material witness and detained. Prior to, or during his detention, was the Mayfield residence or office searched pursuant to a warrant under the Foreign Intelligence Surveillance Act (FISA) or a delayed notification search warrant? If the latter, please indicate (a) the basis for seeking delayed notice of the search warrant and (b) the time period requested and granted for delaying notice.

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103. OGC. In September 2003, the U.S. Department of Justice disclosed that it had not yet used section 215 of the USA PATRIOT Act. On March 9, 2004, I sent a letter to the Attorney General asking him to clarify whether section 215 has been used since September 18, 2003. (Copy of letter attached.)

a. Please indicate whether section 215 has been used since September 18, 2003.

b. If section 215 has been used, please describe how it has been used. How many U.S. persons and non-U.S. persons were targets of the investigation? Was the section 215 order served on a library, newsroom, or other First Amendment sensitive place? Was the product of the search used in a criminal prosecution?

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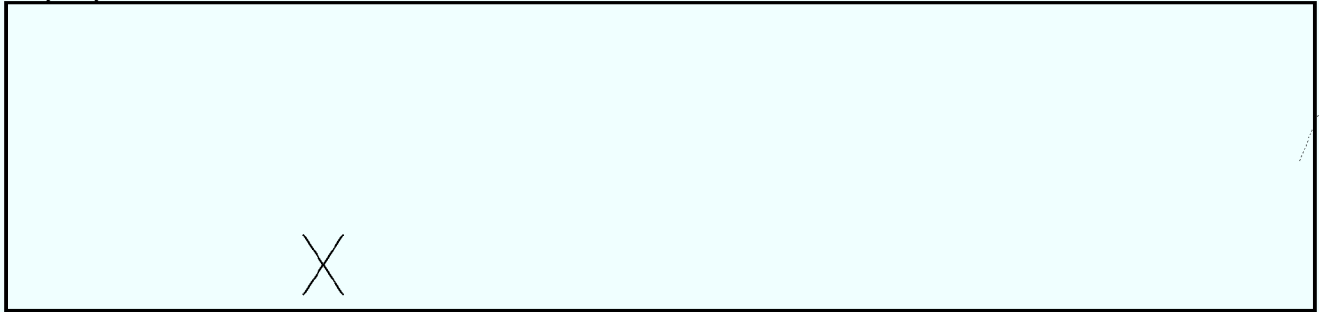
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TO: Mr. James A. Baker
Counsel, Office of Intelligence
Policy and Review

June 5, 2002

FROM: Mr. David W. Szady
Assistant Director
Counterintelligence Division

SUBJECT: [REDACTED] (U) b2

ACTION MEMORANDUM

[REDACTED]

[REDACTED] (S)

b1

[REDACTED]
[REDACTED] (S)

b2

b7E

[REDACTED]

[REDACTED] (TS)

[REDACTED]

[REDACTED] (TS)

1 - [REDACTED]

SEE NOTE PAGE 3

b6

[REDACTED] (2)

b7C

Classified by: 6459, CD-6/CDREASON: 1.4 (C)

Reason: 1.5 (C)

Declassify on: X1

~~TOP SECRET//X1~~

DATE: 11-2-2005

CLASSIFIED BY: 65179/DMH/eda

DECLASSIFY ON: 11-2-2030

#05-CV-0845

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WHERE SHOWN OTHERWISE.

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Mr. James A. Baker
Counsel Office of Intelligence Policy and Review
Re: [redacted] (U)

[redacted]

[redacted] (S)

[redacted]

foreign intelligence and counterintelligence. (S)

The point of contact for this matter is Supervisory
Special Agent [redacted] FBI Headquarters,
Counterintelligence Division, Section CD-6A, telephone number
[redacted] (U)

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~~TOP SECRET//X1~~

FEDERAL BUREAU OF INVESTIGATION
FOIPA
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